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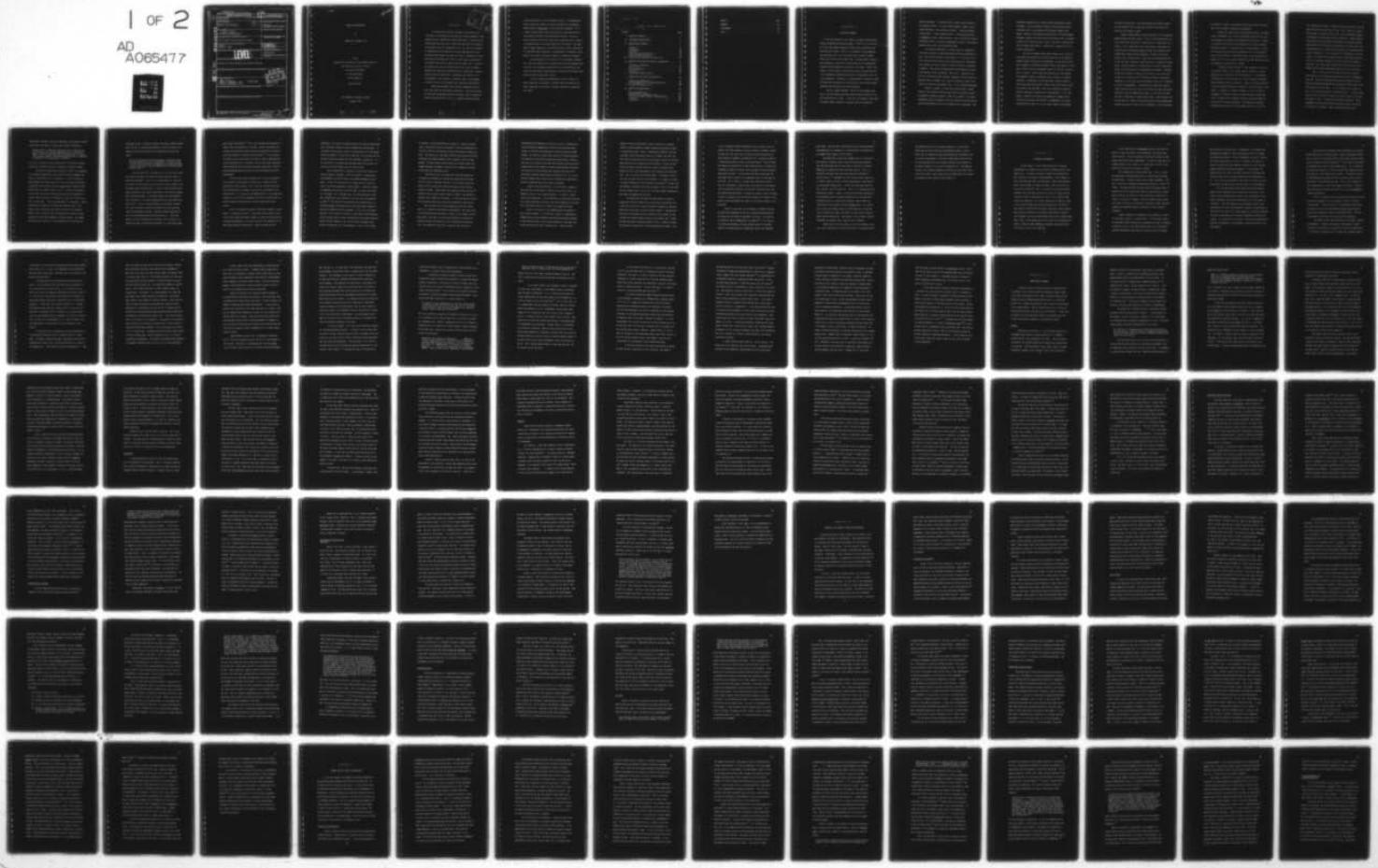
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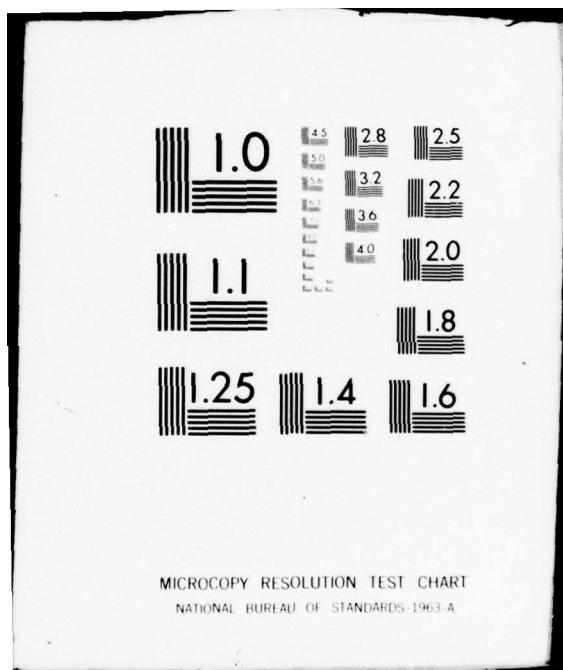
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CONSENT AND OBLIGATION

by

THOMAS WYLIE STEWART, B.A.

THESIS

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P R E F A C E



It would be very difficult to speak of the duties of an individual in an economically and socially isolated situation. What Robinson Crusoe, "watched by cockatoos and goats,"<sup>1</sup> might have done without blame and what he may rightly have been held to account for are questions which, if answerable at all, are sure to be answered by reference to social moralities, the one that was his or ours. We readily admit however that persons living in communities do have obligations and thereby infer that, to some extent, these obligations derive from the fact that we share a common life. Carried to an extreme, this sort of thinking has led to systems of blanket obligation derived from the identification of common good or general interest and every individual's involvement and interest in it. This approach is also subject to problems, namely the assignment of specific duties, or put another way, individual applicability.

These rough extremes allow for many compromises and mixtures, but there are few genuine alternatives. One third position, the idea that we obligate ourselves by consent, that in themselves neither being persons nor living in a community obligates anyone

to anything specific, is to be looked into here. A representative effort to work out consent as a source of political requirements, Michael Walzer's Obligations, will be the work considered. It is a study in application, and a great portion is concerned with persons actually involved in the situations discussed. As such it differs notably from critical works which concentrate their interest in persons who are in situations like those illustrated. The legitimacy of modern democratic institutions and the claims of obligation on individuals whose commitment is questionable are unsettled issues. Walzer is at least as involved in them as in theoretical adequacy.

My consideration of his thesis will be more nearly theoretical. While not departing to any great extent from the problems which he raises, this extended discussion will be conducted against the formal and traditional understandings of consent and obligations with which any theorist must come to grips.

I wish to express my appreciation to John D. Hodson, my thesis supervisor, and Edmund L. Pincoffs, who also served on the thesis committee, for the help I received from them in completing this study.

(cont'd p 1)

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## CHAPTER I

### AN IDEA OF CONSENT

*(cont'd)* The main purpose of this study is to question the relation between consenting and being obligated. I take it as a first task to lay out the proposed meanings of these terms around which the discussion will center. What is it to consent? Having answered that question, what is it to be bound by our consent? Michael Walzer says little in this direct line. He would prefer to show us what consenting is and show us the possibilities of establishing obligation and determining its limits by this means. In this first chapter I shall attempt to extract this notion of consent and give it the sympathetic rendering due any set of contentions to be critically approached. In addition, it seems helpful to locate his ideas of consent and obligation on a grid of more or less familiar understandings and divisions of the areas discussed.

Not all consent obligates. One of the most common legal uses of the term concerns that act which one does in order to signify the waiving of a right. In this act, for example, I may allow the proper medical authority a specific usage of my body for a

medical experiment. A voluntary deal is struck, and he counts on my continued consent. If I have second thoughts, however, due to reconsiderations, I may withdraw my consent. I may excuse myself without blame. "I have changed my mind. I withdraw my consent," is formally all that I really need say. This is the kind of consent then which requires a voluntary continuance in order for the medical authority to say that I have waived my right.

On the other hand there is consent in which a commitment, not unlike a promise, is made concerning some future performance of mine. This kind of consent is often mutual. If I ask you to aid me in returning from a canoe trip by picking me up at a designated river bridge, you either consent or refuse to consent in answering my request. Once you have consented and I have departed, you have an obligation to make the meeting. And so do I. Nothing so specific as a promise has been effected, especially from me to you; my presence there is assumed. But I have an obligation as well as an interest to launch on the agreed river. It is an implied commitment.

Walzer's 'consent,' as used in political theory, is definitely of the second sort and has been called "contractive consent" as opposed to "grantive consent" in the first example.<sup>1</sup> Of course, experiments which are underway, which are expensive, or which require mutual contributions may be said to generate real obligations. And

bilateral agreements do not always produce obligations of great stringency. Thus by argument of degree, this distinction may be challenged, but for our purposes the difference appears plain enough. Whether or not genuine obligation may be incurred through unilateral consent, one of the factors dividing the two, is properly a matter for further discussion. Here I only wish to indicate the area of consent which Walzer is addressing in speaking of it as a source of obligation.

The value of keeping these rather simple points in mind is to preclude the possibility of arguing from one sort of consent to another without allowing for the difference. We may take the fact that a member of our Mountain Climbers' Rescue Club shows up in full gear in time of need as an adequate sign of his consent to participate in a search. But we cannot take showing up at the hospital with pajamas in hand as an adequate sign of consent to a medical experiment. Furthermore, one may have made a general choice of usage and decided that consent is what I have set off here as grantive consent, and that what I refer to as contractive consent is actually something of another sort, like promising. If so, then Walzer is undone out of hand as not speaking of consent at all. In this case, one may read 'consent' or commitment, as he often substitutes the latter, as (in this case) 'promise' and evaluate

his thesis on that basis. This has been done with Locke's theory of tacit consent,<sup>2</sup> and it seems more fruitful than outright dismissal due to reasons of usage.

Another common manner of analyzing consent is to distinguish between express and tacit consent. This is an old distinction, dating at least from Locke,<sup>3</sup> and it involves us in a great many difficulties. This is especially true if one follows a legal model for considering the relationship between consent and obligation which assumes that consent is doing something: acting a certain way, making a sign, saying an oath or some other prearranged deed--more at any rate than a feeling or inner decision or an impulse to comply. Walzer's idea of consent is certainly one of willfully 'doing something,' but not necessarily a predesignated performance. Therefore he does not conclude, as some critics of Locke's have, that tacit consent is not consent at all,<sup>4</sup> but that the range of indicating commitment is quite wide, and the substance of what one is committed to varies correspondingly. Thus Walzer does find tacit consent a useful term but also sees a need to criticize both tacit and express consent as they have commonly been taken. Of the latter he would say that it takes more to commit oneself than a single express act.<sup>5</sup> Not only may this 'doing' be understood without being predesignated, thereby resulting in claims which are admitted as valid obligations,

but that this 'doing' in the general sense is more basic to consent than the act formally indicating the commitment.

Perhaps this comes close to saying that consent is an inward event, an attitude, and if true it would open the way for all sorts of assignment of attitudes and attendant political abuses. Silence in a person is difficult to assign meaning to, but once a meaning has been assigned, it is most difficult to argue against it. Political decisions which claim to be obedient to the "silent majority" rest on this difficulty. What Walzer holds is that consenting is a doing, but it is not so easily identified with the express act which we recognize as giving official consent.

"Consent is given over time."<sup>6</sup> This statement is basic to his concept of what it is to commit oneself and what it is to be counted on as an individual with an obligation. It is different from saying, as we feel we must say in certain medical situations, that continuing consent is necessary. Ideally, we should always be living our consent voluntarily; consent to a political group is not static. If however in a moment of danger or crisis our debt of obligation is called to account, we cannot plausibly assume that this is a proper time to question ourselves concerning whether or not we wish to continue consenting. The question has shifted. Socrates did not feel free to leave Athens after his trial, but

this, excepting for times of threats to the state's welfare, was the only time we need to think this of him. Still, there is a sense in which consent, as spoken of politically, may be redefined, changed, or withdrawn; or Walzer wants to say it should be. Strong considerations bearing on this would be the reasons one consented, whether those reasons still hold, and to what extent our fellows have sacrificed themselves for a common cause espoused by the consenting individual in question. It is not unusual for a commitment to a group, a plan, or an ideal held in common to entail complicated long-term shifts in situations, and ways of life which must be evaluated as they come. And it does seem true that the significant social commitments which we make often deepen with time and last for years.

This is all to say that we cannot artificially simplify human affairs for any reason by projecting structures of perpetuity upon them. Nor can we obligate men by providing benefits tied to devised ceremonies and then declare absolutist claims on their lives and energies on a moral basis. It is not unusual for a person to say, "I just did not know what I was getting into." "I will be glad when my hitch is up, when my watch is up, when my lease is up, when the season is over." "We were just kids when we married." These statements seem to claim that persons consent socially as they go, or at least in increments. Walzer would hold that for each

identifiable increment, there are, depending on the group or society within which the consent is given, many informal indications.

Consent itself is sometimes signified not by a single act but by a series of acts, and the determining sign is always preceded, I think, by something less than determining: a succession of words, motions, involvements that might well be analyzed as tentatives of or experiments in consent.<sup>7</sup>

This sort of thinking clearly claims there is an option to express consent as a plausible source of obligation in political theory.

The idea of consent being considered is that it is something like informal communication which may be specified, hardened, and set by a conventional act of 'consenting.' Is this an effort to make something less than consent out to be the source of political obligation? Many thinkers who have sharpened their teeth on Locke, Hanna Pitkin for example, would say so.<sup>8</sup> To answer for ourselves we will have to look not only more closely at the requirements of consent, which we shall do in Chapter III, but also at the way consent is being used. I am not speaking here of a definition. Rather assuming that we agree that someone has consented, what is the extent of the obligations which may be incurred in this manner? Walzer's idea is that the limit of obligation incurred by consent correlates to the kind and degree of consent offered. An example, and one we shall return to, is the extreme case of incurring the

obligation to die. According to Walzer, only deep, longterm commitment like that of Socrates which admits of the full value of citizenship can ever be the source of an obligation to die for the state.

How do they [persons] create and recognize those moral goods for which political dying is conceivable? I am not sure, but I am sure that no man can be obligated to die unless he admits or has at some time in the past admitted that such moral goods actually exist.<sup>9</sup>

This idea that one is obligated "in so far as he has chosen" also seems to be open to a question of great practical import in political philosophy. I refer to its determinability. Given Walzer's basic of idea of what consent really is, does it admit to any procedural means of application? In moral thinking concerned with human interaction, this usually comes down to the question, who may make the determination? In the above example, who may determine when a person has "in the past admitted that such moral goods actually exist?" I wish to represent Walzer as being able to answer this question without saying that obligation for one person may always be determined by another, and again without saying that a man is only obligated when he believes that he is. The former answer is to give up the notion of consent, and the latter is to forsake any hope of establishing obligation in a sense which would

ever justify enforcement.<sup>10</sup> First, the consenter may determine for himself when the obligation is incurred. Sesonske attributes the concept that obligations always involve the possibility of making a claim and therefore a claimant to William James.<sup>11</sup> This expresses the public nature of obligation and admits to public determination of what obligations are. Therefore, not only the person supposedly under obligation but the claimant and other appropriately involved and knowledgeable persons may have a hand in determining specific requirements.

This may seem to open the doors for all sorts of determinations of what the obligations of others are--a common, critical description of tacit consent. But I have not said that the claimant's determination is primary or even carries the weight of presumption with it. At any rate, the determination is to be made with reference to action of the consenter, and this can only be done to a certain extent with groups and to a lesser extent with larger groups.

As far as the public content of contractive consent, I think Walzer is essentially correct. It only makes sense, even on a more strict view of what constitutes consent, to admit that the stress on designated performances is not only to protect the consenter but to make consent publicly determinable. Express consent has this

advantage, it is a means of consenting which has been pre-established and is therefore subject to highly standardized interpretation. If we actually value express consent, as we obviously do in the medical field for example, we value what it means for the individual and the status of those who proceed with the individual's permission. It is not the form or the standardized procedure which gives consent its value and its moral weight, only its formal surety.

Who can determine if a patient or prisoner has freely consented to medical treatment? Ideally the answer is anyone due to the precedents, the legal records, and common knowledge of procedures. If this will not quite do, an answer which is almost as ideal is any person competent in these matters. And given a degree of competence and time to talk with as well as witness the action of a consenter, this is perhaps true. But the conditions of freedom, voluntariness, and information make even this seem doubtful at times.<sup>12</sup> The consenter must certainly be convinced that he is consenting before the procedure and so must the medical authority and anyone connected with the procedure. If he is not, he should speak up. But one thing is certain, if the patient could determine at any and every point in time, including the future which contained harmful effects, whether or not he ever really consented, there would be a great deal less experimentation. Thus I see no reason

to include, in the determination of consent as a source of obligation, a hard proviso that the individual is the sole determinant or that his claim as to obligations arising from consent is always primary. The certainty of individual admission which we get from legal procedures and signed documents count as powerful tools in legal defense. But they cannot assure consent to a greater extent than common knowledge of another's intentions in a community of persons within which the commitment occurs.

Admitting to this, one might still hold that though the strictness of procedures for registering consent does not insure the full intent of the moral doctrine, it has symbolic value and should still be a necessary condition of what we are willing to accept as consent. Shuman holds this regarding medical practice.<sup>13</sup> Consent by this account becomes a kind of 'motto in the medium of ideology' which conditions attitudes. It serves the parties involved the way saying creeds serves the pastor-theological sophisticate.

Now I believe that treating something, which has literal value, as a symbol has some obvious disadvantages. Not every thing we find problematic but desirable is recast in this manner, and for good reason. But this is not the main objection to requiring an extensive ritual which parallels acts of consenting in political life. The problem is essentially a practical one, not only in

determining the willingness of citizens, but also in referring to the vast myriad of memberships and political associations where consent is lived out and obligation is called to account on moral grounds. An inability to meet these practical issues and preserve the integrity of the idea of consent may be the theory's undoing. But there is no reason to hold that the conditions which were built around the particular dangers of medical experimentation (the absolute inability of some--perhaps most--medical operations to be effectively reversed) should hold for political life. For in the political sphere where consent and its withdrawal are admittedly a problem, consenting need not be taken as permanent.

Walzer would hold that there is, in this move, a danger of importing the air and sense of finality into politics which, in a democratic state, it by no means requires. In politics, consent implies reconsideration. If the conditions of consent are conceived as to grant perpetuity, one might claim that perpetuity is justified. This self-induced tension is a product of misapplied caution.

Walzer is also wary of the problems which the notion of tacit consent presents. If to be tacit, consent is understood as something which occurs unknowing and beyond the possible awareness of the individual who is held to have consented in this way, then he does not believe in tacit consent at all. There are cases

however in which an individual's being a claimant in a setting implies an understanding of common, unexpressed obligation rooted in involuntary action. There is some question whether or not the individual, having previously acted as a claimant, can then 'beg off' with the excuse that he did not knowingly consider or was never made aware that the situation could be reversed. He may say that he did not admit to being called on to meet an obligation even though his prior claim represented a tacit admission of these matters. This is not his only possible reply. Faced with a claim of this sort, he might do any of the following: (1) comply, (2) show a relevant difference in the situations as reversed,<sup>14</sup> (3) deny that the scheme of obligation being used to appeal to him is in fact what the new claimant says it is, or (4) claim that another obligation or duty takes precedence over this one.

The second and third moves are permissible it seems for someone who refuses to admit even a *prima facie* claim against him. I would like to use this survey of possible responses to represent theoretical objections to claims rooted in consent. The objection most often raised against Locke's notion of tacit consent is that it makes the relevant group so large, or put another way, it makes the deed necessary to implicate oneself fully so slight as to deny the concept any plausibility of being connected with choice. This

is not an argument against obligation by way of consent, tacit or express, but rather against a certain criterion of consent. Walzer too does not think that Locke's notion of consent being given by bare presence or temporary residence will do. Nor does he think it a significant feature of Locke's political theory.<sup>15</sup> But this does not exhaust the possibility of some criterion which is stronger than residence but weaker (or Walzer would say weaker by some standards) than express consent. I do not think that Walzer would deny the individual above an appeal to circumstances which he feels bear on the issue. This in fact is a rather clear theoretical frame in which to investigate, as Walzer does, such questions as the obligations of oppressed minorities, politically alienated natives, and the fighting-age adolescent. He would say, however, that for anyone living in a community, the third option (denying the scheme of obligation by which agreements may result in valid moral claims) is not plausible.

Walzer is very close in this matter to Alexander Sesonske who held that commitment was the key to understanding obligation. He categorizes the forms of commitment as follows: (1) explicit, (2) implicit, and (3) membership in a community.<sup>16</sup> In as much as a critique of obligations incurred through consent is directed against a too broad meaning of membership, Walzer (and Sesonske)

would agree. But this does not mean that one can credibly maintain that membership in a community is a process which is possible without members being subject to valid claims.

One might wish to press the argument, and it is pressed in the interest of keeping consent clear and protecting consenters, that the obligations which we take here as relating to voluntary membership in communities arise from other sources. This is a necessary conclusion since they do not meet the conditions of express consent.<sup>17</sup> Candidates for this source are God, nature (as in natural duties), utility, survival requirements or perfectionistic requirements among others. I think this move might keep the term 'consent' free from obscurity. But if it is believed that the problem with consent is abuse, it should be noted that consent was not introduced solely to ground obligation but to put some self-contained limits on it which other accounts, some of which are listed above, do not admit to by any internal means. It is difficult to see how an honest effort to involve persons (or show how they are involved) in their own affairs is more likely to lead to abuse than the alternative: man chooses so far and then is drug or threatened as necessary into a state of civil obedience.

Walzer would like to describe, as fully as possible, a person's moral requirement as being a fulfillment of responsibilities.

The responsibilities arise, perhaps necessarily, in the social milieu and are often picked out and applied by others. Just as often they are focused and timed around objective requirements such as survival requirements of the state, human needs, and foul luck. But the requirements do not originate externally and instantly in the time of need but in a previous responsible act. The required extent of our freedom, knowledge, and capacity at the time of that prior act is what I shall take up after an examination of the range of obligations which Walzer's thesis admits to.

## CHAPTER III

### THE RANGE OF OBLIGATION

In this chapter, I wish to move from Walzer's generous interpretation of consent to the concept of obligation which corresponds to it. In order to locate his concept of obligation on a grid of more or less familiar understandings, I shall compare it with a few other positions in various ways. Some of the questions which I shall attempt to answer are these: What sort of act can be called an obligation? Must it be specific and institutionally defined? May we obligate ourselves to try and do things, the possibility of which is questionable, or must it be a specific deed within our capability? In a consent theory such as Walzer's, what is the relation between obligation and motivation? And finally, what kinds of things which are normally discussed as moral requirements cannot be admitted as obligations under Walzer's scheme? I shall attempt to arrive at some platform conclusions on these issues. When I turn, in the second part of this study, to an application of Walzer's theory to some contemporary problems, these conclusions will serve as a basis for evaluation.

In the introduction of Obligations, Walzer claims that his concern is about how persons incur obligations, not which obligations they have. The only substantive claim which he makes is that persons should honor their commitments.<sup>1</sup> He does not stop over this assumed injunction, but I think it is a good place to start in considering his use of the 'obligation' concept.

The statement may be taken several ways. First, it might be understood as founding obligations in a more primitive concept of natural duty. We have a natural duty to honor agreements. Second, it could be a statement concerning the meaning of 'should' and 'ought.' He might hold that the whole area of obligations makes no sense unless we first agree that saying an individual has a commitment is also to say that he, at least *prima facie*, ought to do it. Finally, it could be a sidestep, a sort of bracketing which allows him to pass directly to a discussion of obligations where intuition supports the undeniable ubiquity and weight of claims based on agreements.

However unspecific the meaning of the injunction, it would be a mistake to think it a vacuous claim. It is true that saying an individual should do what he has consented to do tells us nothing of what he is to do. The same thing has been said of rationality and the requirement of consistency in actions as well as thought.

And this too, on the face of it, is undeniable. But coupled with accompanying assumptions, these claims become levers for holding far-reaching conclusions. Walzer's assumption, one which I believe will bear up empirically, is that it is unlikely for anyone in a society to account for their material situation or their statuses without admitting to multiple agreements. In like manner, the expectations of our lives, our goals, necessarily anticipate the ability to make claims on others concerning their commitments to us. This is only to be doubted if one thinks of claims as calling for positive actions; we all claim the right of non-interference.

His view then combines the primary position that men are bound by their agreements and the empirical result that, by the nature of social and political reality, their obligations are multiple, widespread, and various as derived by this single means of incurrence. Thus when disputes arise concerning claims or when questionable claims are being honored,<sup>2</sup> a method of determining the validity of the claims is to assume consent as a necessary condition and look at what Walzer calls the moral biographies of those individuals. This provides the individual in the case due consideration (and for our purposes it also provides an interesting test of consent theory).

How one wishes to designate those individuals to be investigated seems quite an arbitrary matter. Walzer investigates individuals in groups, or individuals which are the target of group claims that he considers socially significant.<sup>3</sup> The obligations considered are therefore cases which invite generalization. It is, though not in a doctrinaire manner, an effort to qualify what kinds of obligations hold up in the light of prior actions. The nature and scope of the obligations considered are thus as multiple and as broad as the kinds of claims which may be made. These in turn reflect Walzer's contentions as to the various manners of consent. Generally then, one cannot rule against any type of claim, as an obligation, without investigation.

This is in contrast with the idea that the sources of things that make one subject to claim are partly 'natural' and partly 'institutional.' Thus a distinction is made between natural duty, as having to do with the requirements men have as men and those derived from procedures having an institutional basis. Only the requirements of the latter sort may be called obligations.

An example of this kind of thinking is John Rawls' concept of obligation. "Further, the content of obligations is always defined by an institution or practice of rules which specify what it is that one is required to do."<sup>4</sup> Rawls has a generous idea of

'institutions' of course which include promising, marrying, holding public office, etc. As such, the requirements called obligations may have quite a broad range. But Rawls still rests heavily on the notion of natural duties.

I believe Walzer would dispute this distinction on two points. First, he agrees with Locke that keeping commitments is not institutional but primary to man. It is therefore not subject to the limits and background conditions which Rawls places on it. This is not to say there are not conditions of consent, but those which Walzer's makes out are descriptions of the individual consentor. I shall take this up again in Chapter III. Second, I believe Walzer would note that 'natural duties' are by any list--take Ross' for example--social in content. As such they either refer to some unanalyzed area of commitment of the part of individuals, or they are not requirements at all. More will have to be said about Walzer's theory before it can be evaluated in this respect.

The general idea of obligations as being actions which are institutionally specified serves to locate one end on a linear model. The model stretches from legal requirements at one pole to something quite vague, such as parental expectations of virtue, on the opposite end. A philosophical position expounded by W. J. Rees

serves to locate the less specific end of the continuum. He asks these interesting questions concerning the fifth commandment.<sup>5</sup>

When shall we say that our mother and our father are honored? When is our duty done? What is it that honoring consists of? Most persons would grant that the content of a correct answer to at least the final question would vary. This duty then commands no specific action. He concludes that duties, in their general nature, are dispositional. "Be honest," is a simple example of an imperative which makes sense without necessarily referring to a particular deed, though it does depend on certain situations. Rees finds this useful in discussing objective and subjective concepts of duty.

Applying this to obligation, one can see that it expands the possibilities of being obligated without being completely dispersed by the generality associated with natural duty. I may have an obligation to "set myself" to do something. I can contract to do specific deeds certainly, but (and here we should recall the soft notion of consenting which Walzer espouses) I can also consent to be willing to act in certain ways. Enjoyments of benefits which require mutual sacrifice indicate what I may be counted on to do in, as of yet, unspecified circumstances. The content of obligations may therefore be extended to whatever makes sense in the act called consenting.

In short, Walzer does not prejudge what an obligation must be in terms of units of action. If however these alleged obligations are to be explicable by consent, and he thinks they are, they must be (though he never approaches the possibility of measurement) rather isomorphic with their consent source. The entire spectrum, however, from dispositions to duties assumed by public station to specific, rule-governed actions may be obligations.

Looked at critically, this continuum might be thought of as stretching from uncertainty to certainty, rules having the clearest meaning while 'being true to the cause' or 'being in charge' are subject to meanings which elude conclusiveness. I do not wish to maintain that the ability to be clear and positive is easier in the case of dispositional obligation, but there are also problems with the more legalistic concept. Precisely because they assume such a high standard of explicitness, these requirements are subject to wide and especially keen analyses concerning that explicitness and the shifts of meanings to which language-even in its most careful usage-is subject.

Ronald Dworkin's work on civil disobedience illustrates this.<sup>6</sup> That we are required to obey 'the law' is clear enough in this account. But there is no guarantee that even the supreme court can state, clearly and for all citizens of the United States,

what 'the law' is. It comes down to the individual, one might even say conscience, to be a final screen in separating the law from other interests. The conscience in this sense is a highly informed sort of inner court which has followed and evaluated the reasoning of various appeals. The complexity of these matters, even though the stress is on clarity, leads me to think that there is no reason to think them more workable than sincere decisions of conscience concerning more general kinds of requirements proceeding out of agreements which are not as formal. The problems envisioned in admitting that obligation, and here we are still referring to requirements created by consent, may be dispositional, are not good reasons for dismissing consent as an inadequate source of obligation or limiting it to a restricted kind of requirement. The same argument may be made for the possibility of obligating ourselves to procedural processes as opposed to products or ends only.

In the next chapter I will look at the conditions necessary for obligation-generating consent. It may well turn out that there are kinds of things, processes which we cannot reasonably assess the result of, and other sorts of things, which make consent meaningless and thus nullify the obligation. This conclusion, if it rests on the qualification of valid consenting should be worked out in a discussion of that subject. To prejudge the scope of obligations to

which we may consent, due to the generality of those concepts or by convention, is to short-circuit the investigation.

In addition to noting the range of actions he would term obligations, I would like to discuss how Walzer's concept of obligation relates to motivation. Since Walzer's notion of consent looks like what one critic has called an "attitudinal" model as opposed to a more formal "occurrence" type,<sup>7</sup> I wish to clear up any possible confusion over Walzer's distinction between being and feeling obligated. First, Walzer would admit that there is a strong connection.

The process by which obligations are incurred and the process by which they come to be felt are not the same, or not necessarily the same. They are similar, however, in at least one respect; they are both social processes.<sup>8</sup>

He is not interested in denying this connection because he is not, as it is sometimes said of consent theorists, out to build a rationale for claimants alone. Walzer is attempting to arrive at a scheme of obligation which is "internalist" to use Frankena's helpful language.<sup>9</sup> On the other hand, he does wish to maintain that feeling is not sufficient for obligation.

Obligation, then, begins with membership. . . . Membership itself can begin with birth. Then the sense of obligation is acquired simply through socialization; it is the product and most often the intended product of religious or political education, . . . One does not acquire any real obligations, however, simply by being born or submitting to socialization

within a particular group. These come only when to the fact of membership there is added the fact of willful membership.<sup>10</sup>

Having said this, the original connection appears to be cut. And this is precisely the result that most moral philosophers wish to avoid.

It is a moral problem, and a problem in ethics if attended to, when a man, whom members of the community agree is obligated, does not meet his obligation. It is a similar and even more difficult problem when even the person agrees with the members but is still not moved to act on his conviction.<sup>11</sup> On the coin's turn, it is a problem when a man has worked out rational limits for himself within the community as to his indebtedness--and received social support for his conclusions--but still feels a sense of shame or guilt or, as Walzer would say, feels himself to be a traitor. Most theories try to take this problem into account in determining what it acknowledges as an obligation. Consent theory is no different. Its solution is reflective. When my alarm clock goes off in the early morning darkness of a Saturday--it being freely set by me the previous evening as a part of a plan to take my children fishing--I may tell my wife not to cook any breakfast, that I do not want to get up. She is taking consent theorist's tack when she says, "Oh yes you do; you set the clock."

I do not believe that Walzer is so consistently internalist as to say that there can be no obligation without a feeling of obligation. But there is a kind of faith here that the successful reference to a former responsible act, free and informed consent, which quite likely represents the individual's interest, will always count as a motivating factor. I have in mind here C. D. Broad's notion of a "motive-component for the action."<sup>12</sup>

The alleged connection between obligation and motivation is not therefore a necessary one, although Walzer sometimes speaks as if it is.<sup>13</sup> It does rest necessarily on the possibility of showing how the obligation reflects the individual's own doing. This has the advantage in the case of incontinence of not creating bitterness in the coerced person which results when the rationale of coercion refers to the public interest for example. It is not unreasonable for a person to ask why he has been singled out as the one who must suffer for the public interest even if he agrees that the interest being served is genuine. Consent theory, if it can make out the match of self-commitment against each claim, avoids the issue of unjustly imposed coercion even though it does not cure "incontinence as irrationality" which Davidson describes.

It has been pointed out that moral expectations of persons do often include a requirement of moral feelings, that blame is

assigned persons for not having basic moral sensitivity.<sup>14</sup> General discussions of blame and blameworthiness as referring to 'character' seem to support this view, though indirectly.<sup>15</sup> An admitted part of an admirable character is appropriate moral sensitivity. It has also been maintained that it cannot be my duty to have a motive.<sup>16</sup> The reason a motive is disallowed as a duty is because it is a feeling. And producing a feeling by moral will is held to not always be possible. These two positions, both intuitively sound and both capable of being supported by evidence, seem at odds. I will hold a proposed solution in abeyance while applying this issue to what I have said of Walzer's 'obligations.' It was mentioned that the kind of thing we may be obligated to is not to be limited prior to direct investigation except by the limits of the claims themselves. Some persons would hold that a feeling is a moral requirement, may be the subject of a claim. I now put the question, considering the large range of claims that I would allow in court, can a feeling become an obligation? Put in a way which suggests the answer to be considered here, can I consent to a feeling, or more precisely, to a person concerning a feeling?

A quick, Kantian answer would be: only if you can. This seems true, but it does not seem like an answer. Considering that feelings are not completely indeterminable and also what we have

admitted by including Rees' concept of duty in obligation, we could be forced to admit that one may "set himself" to feel. A marriage contract might be understood in this manner, especially when the initial feelings of romantic love have been altered by time. We cannot admit to this, however, because our purpose in consent theory is to provide an objective (or as objective as possible) means of validating claims. A disposition may be in Simmons' term, 'attitudinal,' but it must be more than a feeling. Thus to put the conflict posed above to rest, I would urge agreement with Ross that a demand for a motive may be an expectation, but it can never be a claim as something consented to. We may expect persons to be of good character, and blame them if they are not, but we can never demand it. The resolve or the personal ideal of good character and standardized feelings may be generalized in a group, such as the boy scouts, but in as much as character represents feelings rather than a willingness to act on valid claims, it cannot be demanded. The image of coercing character or a positive feeling makes this argument appear absurd. Whatever moral or emotional rehabilitation is, it is not the successful pressing of a claim. I would put the matter like this. Obligation is not the same as a feeling of being bound, but the only source of real obligation, consenting, always provides a "motive-component for the action." Perhaps this is too strong.

Feelings change, and new feelings can obliterate old ones I think.

And I do not want to say that an obligation fades with the feeling.

The point is that consent is a reasonable ground of a motive; if after consenting an individual says, I do not want to do it, the onus of justification is on him.

It may seem from this sketch of obligation that Walzer, as I represent him, would allow far too much, that it is unwieldy at least. It might be helpful in addition to noting the limit on obligation in the area of claims against emotions, that the notion is quite closely bound by a firm qualification of the source. We have no obligations as persons per se. Nor at the other extreme does the fact that we are in society generally entail that we have as Robert Nozick would say, "a general floating debt which the current society can collect and use as it will."<sup>17</sup> No metaphysical position whether like those attacked by G. E. Moore in Principia Ethica,<sup>18</sup> nor those he came round to recommending there are admitted here. And finally, and more important for Walzer, there is no obligation incurred by passive reception of unconsidered benefits. It can already be seen in this that a great deal hangs on what we shall come to consider 'willful membership.'

## CHAPTER III

### CONDITIONS OF CONSENT

I would now like to look more closely at the possibility of stating a set of limited conditions concerning consent. What, in any case, may consent not be? What is necessary before we can accept any act of consenting which would result in a valid obligation? As I propose the conditions, most of which are traditional, I will compare Walzer's idea to them and argue for a crucial condition which he offers, one which is not traditional. I shall also be asking if his main idea that consent as commitment over time either contains these conditions or make them irrelevant.

#### Freedom

Consent must be voluntary. If an individual agrees to an arrangement under duress or undue constraint, it is generally granted that he is not obligated to its terms. There are obvious cases where this standard applies well enough without explication or discussion. But the borderline cases, where liberty is unquestionable but thought to be irrelevant to the issue of choice or

obviously relevant but only doubtful, that require us to develop clear, if general, guidelines for considering particular cases. Freedom itself needs to be broken down if it is to be useful. For in a sense familiar in common usage, freedom designates an 'all conditions met' status. One may consent if he is free to. I will not develop, or repeat, any general thesis of freedom here. When I speak of voluntariness, I am trying to eliminate what Plamenatz would call "a certain species of unfree actions" from the domain of consenting acts.<sup>1</sup> The sense of freedom as liberty conveys this as well as stressing that freedom in this sense is freedom from.

The constraints on freedom which are intentionally induced by human action are the easiest to rule out. A coerced choice is not consent. By what is coercion? Ideally, it is a fixed point on a continuum which stretches from persuasion to force. Carl Cohen leaning toward the latter extreme defines it as follows:

By 'coercion' our common meaning is compulsion by physical or moral pressures. A coerces B when B is compelled or constrained to act as A wishes him to, as a result of measures taken by A to effect just that result.<sup>2</sup>

This definition seems only to stress the forceful nature of coercion and moves the discussion to the equally problematic areas of compulsion, being compelled, and being constrained. This emphasis on coercion being stronger than just 'something affecting choice' is

echoed by Joseph Tussman.

There is a difference between an alternative's being inconvenient, hard, or unpleasant and its being impossible. . . . There is a considerable range before we come to the situation in which choice disappears because an alternative is really no alternative at all.<sup>3</sup>

This is certainly true. But it seems to me that Cohen's definition is too narrow. Translated into the political sphere by Tussman, it disallows considerations of interests which we think significant in determining freedom.

I think that the meaning of coercion, though the usage may vary, does admit to choice though certainly not free or voluntary choice because of certain conflicts of interests. These interests may be quite general, basic needs in fact, but this does not always mean immediately compelling interests. If a child is kidnapped on the street, we would say he was forced into the car. The father then 'consents' to pay the ransom under coercive conditions. The father may not be 'compelled' but the situation is coercive nonetheless. The father's 'consent' grants no right of possession to the kidnappers. For our purposes then, coercion includes illicit persuasion. A coerces B not only when he uses constraining or compellent powers. A coerces B when measures taken intentionally bring

B into strong conflict with his interests, well-being, or moral integrity as B understands these terms.

Interpreting coercion to include these less obvious hindrances to choice brings up the question of where the line is to be drawn. If you offer me a chance at a million dollars if I risk my life savings of 10,000, we would not normally say I was coerced into taking the risk. But this is not a complete answer. If you knew that I was a compulsive gambler, who was heavily in debt and under pressure to pay off on pain of harm or death, the choice might be considered coercive. If you knew that the life of my son depended upon expensive medical care far beyond my savings and means, your actions begin to resemble the kidnappers' in making me this offer. I cannot say where the line is to be drawn in all cases, but ideally it corresponds with the place where choice dissolves. This, as we have seen, depends upon the person's situation and interests as well as his ability to resist force or constraint.

Both Cohen's definition and my discussion refer to the intention of the party said to be coercing. But what about those situations which effect a breakdown of liberty without intentional content? What about limits on freedom which are non-coercive in the above sense? Asking this question serves to point out the narrow range of unfree actions being addressed. Even natural

incapability could be thought to belong here, though it clearly does not. We do not speak of freedom of speech as being freedom from dumbness; it refers to a social situation. And so does voluntariness in the manner it is addressed here. The question concerns those social conditions or situations, which effect the same problems or limits of choice upon the individual as a coercive situation would, but which may be accounted for by an 'invisible-hand explanation'. These explanations "show how some overall pattern or design, which one would have thought had to be produced by an individual's or group's successful attempt to realize the pattern, instead was produced and maintained by a process that in no way had the overall pattern 'in mind.'"<sup>4</sup>

I wish to hold that there is no logical difference bearing on the validity of consent to be assigned the source or cause of a lack of a reasonable standard of freedom. The practical importance of this point revolves around the question of obligation. When the weight of presumption is with obligatoriness and the onus is on the supposed consenter to demonstrate a lack of necessary freedom, may he point to some social situation or must he point to someone? Admittedly, the moral situation is vastly different in the two cases, especially if the claimant is accused of coercion, but this is not decisive for our requirement. This is a confusion between

valid consent and whether or not a claimant deserves to have his claims met. In the case of coercion, he does not, but that is not why the obligation is denied in contract theory. This notion of desert and obligation is also a source of confusion in other related matters and serves generally to obscure the relevant issues I am trying to clarify. In this same way, I shall argue that the condition of being informed is essentially untouched by the distinction between deception and ignorance of relevant facts. This is true except in the case where deception, if it bears up, simplifies the matter by making the question of negligence on the part of the consenter unnecessary.

Consent must be free from social constraint. This is not absolute freedom in all realms, nor is it 'as free as could be conceivable.' But there must be a minimum balance of liberty in which choice is intuitively possible and not attendant with such a strong conflict of interest as to make the 'choice' non-determinate.

### Information

A second condition of consent is that the relevant facts be at the disposal of the consenter. This is a familiar condition and is usually indicated by a description of the agent; he must be informed, knowing, aware or educated. 'Informed' seems to convey

the general idea, but knowing seems stronger and educated stronger yet. But even a man educated in the area concerning a particular consenting act may be deceived, and it is plain enough that the least this condition can do is relieve us of meeting invalid claims by reason of deception.

The basic idea is that a person must be able to determine what he is getting into. There seems to be at least two ways in which a person may not know. I wish to claim that only one of these ways invalidates an act of consenting. This way concerns an ignorance of implied facts and even this position requires qualification. The second way a person may not know is that enjoyments may be accompanied by certain implications which he does not willfully and deliberately admit to due to a lack of time, desire, or any number of other factors. While certain facts may be embedded in these implications, which are typically requirements of mutuality, I envision the problem here not so much as my ignorance of facts as my failure to come to grips with the meaning of participation even though I have taken advantage of it. Now this, of course, may be interpreted as a fact. It is a fact that I am required to play in the game if I compete and deprive some other player of a spot on the varsity team. But I would add this, and herein lies my argument. Saying that someone should have known certain facts does not satisfy

the condition of actually having the information. But negligence can count as a reason for holding a person to a requirement. This is especially true if some action indicated a use of the facts which were said not to be 'known.'

On the other hand, making an explicit commitment and finding out that I have technically agreed to do something which I would not have agreed to do, had I known, is another matter. Consider these examples as illustrating the differences discussed. (1) On Halloween, I dress my children in their costumes, give them a bag, and send them off down the street. When my neighbors' children knock on my door, I tell them to go away, that I am reading Kant and do not think it fair that I be disturbed. (2) While hiking on a hostel-link trail, I arrive at dusk as a cabin with the woodbin full. Knowing the replacement system, I burn it in the stove that evening. In the morning, I discover that the axe is dull and the runners on the wood sled broken, making filling the bin a job that will throw me off schedule. (3) My wife says she has been wanting to eat at the Cattleman's Steakhouse for months. I agree to take her on the weekend. On Friday, I find out it is in Dallas rather than Austin, where we reside.

I maintain that I have tacitly consented to play the trick-or-treat game in the first example. I am obligated. Though I have

explicitly consented to go to the Cattleman's, I am not obligated to drive 180 miles to Dallas due to a failure of the consenting act to meet the condition under discussion. Two above serves to show the complexity of the matter in that facts on both sides of our distinction between implied facts and implied obligations may either be known or unknown.

The difference between these two features of being informed seems politically significant due to the psychological nature of disputes. If a person really did participate in 'enjoyments,' to use Lockean language, and these were conditional upon cooperation, I would say there is a strong possibility that he may be shown what was involved in a way in which we cannot show a previous commitment to an implied, and unreasonable, fact. Being surprized by new facts and being expected to honor these implied requirements can only lead to bitterness and political unrest. Recalling the close link between consent and motive, however, we should expect that necessary arrangements which are applicable to the individual by his own participation in them need not do so.

Finally, I need to point out that there is a limit to the application of this criterion. No one knows completely what he may be committed to, and this does not mean that there is an automatic limit to the commitment at the point of ignorance. Especially in

hard cases like war, certain procedural agreements, and agreements which specify ends rather than actions, we are forced to consider other things in asking about the limits of our obligations. But a reasonable standard may be said to obtain if these problems are aired openly and our ignorance is shared and considered in the process of making the arrangement, recruiting, or determining the priority of the goal.

### Capacity

Walzer does not discuss capacity or competence though I believe he is interested in the abuses associated with this topic. I would like to attend it, as a condition, and then ask if theoretically or practically it may be omitted from a discussion of political commitment.

By 'capacity' I shall mean something distinct from capability. A free and informed person is properly capable of consent insofar as we have described it. So capacity would be a redundant condition. Capacity here is intended to refer to a certain appropriateness due to the moral situation in which consent may be affected. It is capacity in the sense of the common phrase: 'While serving in that capacity . . .' I might be free from any pressure to sign a contract representing my company, and I might also be

fully informed. If however, I am an executive secretary and not the company president, I may not, in that capacity, consent to the closing of the transaction.

These points might not seem significant, but considered as a model, they may be utilized in defining consent, in what for Walzer's theory, is a too narrow way. The president has the capacity, the right, to sign contracts. As a person, I have a right concerning my physical person which allows me to consent to certain things. The contractive model of Walzer's appears to be unable to furnish any criteria of appropriateness, any specifications for the holders of rights unless we wish to make citizenship an aristocratic term as it was in Athens. Even this would only solve a small portion of the area over which Walzer believes consent falls.

His scheme is, I am free of obligation and by consent I may bind myself. The question is, by virtue of what power? This seems to be the question which plagued Prichard so and which he related in "The Obligation to Keep a Promise."<sup>5</sup> Prichard's tendency was to look into the rules and institutions presupposed in certain actions. He asked, what must be necessary before I can obligate myself by an act of speech? He has the company of J. L. Austin, Searle, and Rawls in this orientation, and the work is both interesting and persuasive. One recent account of how this power is constructed

socially is given by Ralph Ross.<sup>6</sup> He distinguishes between persons and statuses. Persons incur obligations by joining groups, the locus of obligation, and become obligated by applying a kind of categorical imperative: "Accept in your person the obligation of your statuses."<sup>7</sup> As we shall see in Chapter IV, this concept of obligation does not have the scope to make it adequate for political theory.

A counter to the concept of a necessary status preceding consent and obligation, and one conveniently concerned with promising, is put forward by Robins. It is that promising is primitive, that the necessary status need not be specified because it is that status we have as persons. Now to make status such a *common* property is to question its proper use. It is also, as I suggested above, to ask if capacity in the sense of appropriateness is a necessary condition of contractive consent at all. If the will can obligate itself as Robins suggests,<sup>8</sup> why insist on more than a free and informed will?

One significant problem with this is pointed out by asking the question, can anyone capable of expressing a will be said to have this power of self-obligation? The answer has traditionally been no in the case of the young and other special cases. Walzer notes that one of the problems that consent theorists have in the

state-individual relationship is with the conscription of persons below the age of consent.<sup>9</sup> That age limits consent is an old and settled condition in law as well as morality. It does not need any particular comment or buttressing even though criteria for being at or above the age of consent is far from settled and perhaps, for moral purposes, is not able to be settled on a general basis.

Given that we could disallow consent below a certain age, or certain types of weighty consent (I take it that interpersonal and family relationships can cut a finer line here than the law), could we admit to a general power that persons have to obligate themselves? Walzer says that a theory of consent must have a theory of the consenting person.<sup>10</sup> This seems to be very close to what he has in mind. His answer is yes.

The difficulty with this view may be seen by taking a careful look at the way 'power' is being used here and the way Walzer employs it. I mentioned above that to speak of a common status is a questionable use of 'status.' Likewise, the use of a power possessed by everyone (with certain exceptions) which I may exercise without deliberateness (as in the case of tacit consent through participation) is a strained use of 'power.' Carl Wellman makes a case for this "dynamic" concept which he claims is missing from

traditional ethical theory.<sup>11</sup> Generally, he lines up with Robins and Walzer, but even he says that "the concept of power is an intentional or purposive one. . . ."<sup>12</sup> We do grant the ethical power necessary for consent to medical experiments to the same persons who are candidates for contractive powers, but there we are speaking of express consent, and the idea of exercise of power seems at home. What capacity, power, status, standing, are we to identify in those masses whose obligations we wish to explain by their own doing?

This does not look promising.

Before we dismiss the area here called 'capacity' from the conditions of contractive consent or dismiss Walzer's 'membership' from the kinds of acts we wish to call 'consenting,' we should note that Walzer is interested in express consent. Some of the commitments he has in mind do indeed require this kind of special standing which is constituted within the group. The idea of power must be understood and judged over a range of usage. Wellman suggests this: "The concept of ethical power points in two directions, forward to possible ethical consequences and backward to the competence in which it is grounded."<sup>13</sup> Walzer's position is that these go hand-in-hand. When the 'ground of competence' is broad, weak, non-deliberate, then the 'ethical consequences'--that is the obligations--are correspondingly of different stringency or of different

kinds than those incurred by the exercise of a clear 'right of my station.' He holds for example that tacit consent can lead only to negative duties, with one significant exception.<sup>14</sup>

We need not recant our earlier mention of the strained use of power on the weak side of this range. I cannot stop to back it up, but I suspect that power becomes absurd when it is taken as singular and absolute, witness Camus' Caligula. The ability to effect a change in the moral situation is sometimes specified, and this specificity may be necessary for certain effects. This does not rule out the basic moral power we have as persons, the power to enter into a network in which more stringent obligations may be incurred. Wellman may be correct in saying that an adequate formulation of this is lacking in ethics, but it appears to be presupposed in consent theory and is at least embryonic in many of Locke's statements such as, "truth and keeping of faith belongs to men as men, and not as members of society."<sup>15</sup>

A way of arguing for this point is to ask radical questions. On the most general level, the question concerns morality. Of the assertion that one must understand rules to be moral, the question is: by what power or ability does one assent to these rules, give them moral weight, once understood? Of Prichard's view of promising we ask: how do we enter into that mysterious arrangement which

looks so much like a promise to keep a promise but cannot be one? And finally of the political sphere we query Ralph Ross concerning the taking on of statuses or joining the group. By what right, in which capacity, does one act in joining a group or assuming a position which makes our persons liable to the obligations of the statuses? Groups or institutions may designate these requirements, but they cannot create them; only the consenting person can.

Our conclusion is that 'capacity' is a necessary condition of consenting. But as Wellman says: "Each sort of ethical power will have its own sort of competence. . . ."<sup>16</sup> Put in this manner, it is not so different from our other conditions. The discussions concerned with medical experiments on prisoners indicate that systematic studies of 'freedom' are required for every type of situation. And it seems sensible to think that different information requirements correspond, in some manner, to a range of capacity for understanding in, say, the medical treatment of children.

This is all to say that there may be cases where capacity is not an issue. The same is true of liberty and required information. But when we say it is 'not an issue,' we do not mean that it may be omitted. It is not an issue because the condition is clearly met.

### Conditions Versus Principles

The three conditions I have thus far identified are formal and perfectly understandable as conditions. None of these are subject to the suspicion that the limitations they impose are really disguised substantive entries into what is an effort to derive an end-state ethic.<sup>17</sup> To say that a qualified person does something voluntarily and with all the relevant information, says nothing about what the contract may or may not require. Nor does it describe a society in which this process accounts for all obligation. And if one is sincere in deriving moral requirements by this process, this is a desirable feature. Walzer's additional condition, which we shall consider in the following section, is not so obviously clear in its function.

To see why it is necessary, however, let us consider this question. Knowing what we wish to claim for consent may we leave it as described? Are we willing to admit that anything given these entering conditions, may be consented to? Or again, is any obligation derived by consent, limited in only these formal ways, valid at least *prima facie*? I am going to argue that we cannot admit to this even though we genuinely desire to make out consent as "pure procedure" to use Rawls' language or as a "process principle," as

in Nozick's entitlement theory.<sup>18</sup> But I wish to maintain as strongly as possible that this is not due to the possibility of morally repugnant results. This point, which is levelled at R. M. Hare concerning his procedural notion by the naturalists, is important, but I am not dealing with it when identifying conditions. I wish to hold that a specific limit of what may be consented to is necessary as a true condition, that is necessary to the maintenance of the integrity of the concept of consent as we have been speaking of it. Before I present Walzer's statement of this condition, I would like to contrast this move with another kind of theory building which it resembles.

What I have in mind might easily be compared with Rawls' deliberative process of seeking "equilibrium," or Richard Brandt's "qualifying of attitudes."<sup>19</sup> Using this plan to identify conditions for consent, a person would offer a set of conditions, as Rawls does, and envision their possible results. The results are principles which are tested for consistency and against intuitive fixed points or judgements of various camps. The conditions would be built to evolve only morally acceptable results, to get the camps' judgements closer together. The problem with this is that what is morally acceptable has been determined in another domain and consent, as a process becomes so limited as to deprive choice of a

being a determinate of one's moral requirements. This is not a criticism of Rawls' program. He is attempting to derive substantive principles and this process of weighing considered judgements against principles so as to arrive at what "we do in fact accept,"<sup>20</sup> seems entirely correct. In developing consent theory, however, one must emphasize, not what we actually do accept, or can be made to accept with some philosophical reflection.<sup>21</sup> The emphasis is on what we have actually accepted. This is not only a philosophical acceptance. These are goods, services, and mutual dependence. As Walzer says, the language of commitment is action.<sup>22</sup> If, due to what we discover by proposing conditions, there is no room left for choice, consent is vacuous and we would do better to turn our attention to the ground of those judgements determining these conditions or overly stringent side-constraints. We might also ask ourselves why we wish to call this kind of thinking, consent theory at all. A serious consent theorist, one who refers to acts of individuals, cannot stack the deck in this manner. A final condition of valid consent will now be presented before completing our discussion.

#### Continued Moral Autonomy

The final condition which Walzer holds as necessary for consent has to do with the maintenance of moral integrity.<sup>23</sup>

A theory of consent and obligation must include a view of the consenting self: the person who incurs and carries the obligation has to be and continue to be a person of a certain sort, an autonomous responsible man or woman.<sup>24</sup>

Continuing moral autonomy is necessary then to make sense out of consenting itself, at least contractive consent. I am not sure that in those situations previously discussed as points of contrast, where the consenter incurs no positive obligation, and where irreversible procedures are performed by consent, that continued autonomy and the ability to reconsider the act is anything but immaterial. If, however, we wish to say that obligation may be created by consent, then consenting in this sense necessarily implies a theory of responsibility. Since I am capable of consenting to situations which may eventually lead to contrary requirements, I must remain free to decide between various claims. If I also believe in natural rights as Walzer does,<sup>25</sup> I must admit to the possibility of requirements other than social obligation. This requires mitigation and a full reckoning with the priority considerations. Any specific claim, any absolute obligation which obliterates or obscures my moral responsibility for what I actually do, represents a kind of moral abdication.

Saying that I may consent to anything is to say I may consent to a prejudiced settlement of my moral future and in the

extreme to 'consent no more.' This is not unlike the scholastic argument concerning the power of God; could he destroy himself? It is not so problematic though, because we can settle for a more modest view of a person, I am not sure if there is any way to completely disown the power by which I consent. But I do think that this act, however it may be justified, is not itself consenting.

By example, I hold that one cannot consent to slavery.

Slavery is inconsistent with the responsibility implied in consenting. This is perhaps more easily understood when extended to the political sphere; government by consent implies reconsideration, if not periodically, then at least on the occasion when abuses are charged. Walzer agrees with a position behind the dictum: without justice there is no legitimate government and no obligation to the state.<sup>26</sup> I shall consider this in Chapter V. Injustice for Walzer is simply a situation in which consent does not count, or does not continue to count. A state may say to the objectors, "You agreed to a plan. We are carrying it out." But it cannot say, "You agreed never to disagree with the way we carry out plans." Nor can it argue, "You agreed to forego all future agreements." Consent can never be left behind in favor of unconditional principles the way Rawls' 'original position' results can be.

Another way to understand this is as a temporal extension of the 'relevant facts' condition. That is, whenever facts become relevant, they raise questions which can only be answered by fully qualified consent. Relevant facts concern antecedent conditions; 'continued moral autonomy' insists that the future can never be taken as completely irrelevant.

Conditions and Consent Given  
Over Time

Walzer's main idea, it may be recalled, is that consent is given over time. The obligation incurred, both in kind and stringency, reflect a quantum of shared moral goods. This idea is not difficult to understand; our question concerns its usefulness. I shall speak in the following, admittedly overly simple, way. Assuming that all other conditions are met, does this main idea appear to be sufficient? Does it include these conditions? If not, does it at least make their being met more likely?

Concerning freedom, time does not appear to bear directly. Coercion may be interminable, and if it is made interminable in order to appeal to legitimacy gained over time, it is all the more repugnant for that. But what Walzer has in mind is an 'as-you-go' process which takes time, not the absurd notion that time justifies.

There is a sense in which the decision to be a good VFW member is more nearly free than a decision to submit to a medical experiment.

There are several senses. (1) It is not a singular decision. I make a part of the decision concerning my general attendance each week. Any prior 'decision' is an intention and must be confirmed on the Friday of the meetings. (2) The decisions to attend refers to a normal state of mind, for me. Unless I am beat up on Saturdays following absences, I am not apt to be subject to perturbation around this specific decision week after week. The simplest thing might be to say of this behavior of mine, which may certainly be the source of expectations and claims too, is that it averages my state of mind.<sup>27</sup> (3) Time provides situational options. Assuming that time allows the choosing agent to seek out settings of choice, I take it as true that an individual who chooses the sets of things within which a more specific choice is made may be considered more free than a person saying yes or no when approached about an important issue concerning his health, his immediate political loyalty, or claim rights due to a situation he is thrust into.

Of course there are situations in which this assumption does not hold. And some of these situations are central to Walzer's concern. For example, time does not affect our limited options concerning whether or not we choose to be governed. In fact all

the senses in which freedom is expanded by time rest on a minimal liberty, and this is the condition with which I am most concerned as necessary to consent. The conclusion then is that the main idea of consent presented does, in some practical situations, avoid certain kinds of unfree actions. But freedom remains as independent condition.

The general idea of consenting-as-we-go appears to be designed to protect us from ignorance. But a Marxist criticism of democratic states is that it often works in reverse, that by an appearance of outwardness and liberty, abuses are lulled out of our awareness by tradition. The same charge may be turned on communist countries with the issue of indoctrination. The conclusion is that we have no hard tie here. "Have I the relevant facts at my disposal?" is a question which it is (almost) always appropriate to ask. Familiarity is no guarantor of truth.

Walzer's idea is more useful in considering the condition we termed capacity. That a person only consents as he is able, is a part of what Walzer wishes to convey in insisting that commitment is a living out of shared goods. A flipside of this idea is that we know we can only count on persons so far, and we know why. They have not given us, or themselves, reason to feel bound beyond a certain point. Here we can say that Walzer's idea of the person

committing himself includes the qualification necessary for that commitment. This is essentially what Wellman describes as the rearward direction of ethical power, its ground.<sup>28</sup>

The final condition is continued moral autonomy. The manner of timespan of a commitment does not appear to bear on this limiting feature we have argued for. It certainly does not serve as a protective measure. In fact, if anything, a long-term, deep commitment, which has involved mutual sacrifice, is a likely candidate to effect moral disability by cutting off just this individual condition of morality. Walzer says of the individual in a group dedicated to a social cause.

He must cooperate with his comrades if he is to deal with the rest of the world, and he can hardly cooperate unless he respects his comrades and weighs their collective wisdom above his own. On the other hand, he cannot do so without paying a price: henceforth his commitment, like the faith of a medieval Christian, will be blind. If he surrenders his critical judgement entirely, dulls his mind and if necessary his sense, abases himself before the Party--as men and even intelligent men have often done--he ceases altogether to be a moral agent capable of making commitments to other moral agents.<sup>29</sup>

This condition, Walzer's own, is the one which his main idea does not work for. These conditions taken jointly do not approach sufficiency for consent. That task is more nearly what Walzer has in mind in his general description. His main idea, however, does not incorporate three of the four conditions which I have argued for.

They remain as independent requirements for evaluating a situation in which consent is said to be effected.

In the remainder of this study, I will be considering--as Walzer does--the application of his idea of consenting to some specific political groups and problems. In discussing this application, I shall use the conditions of consent here identified as an evaluative base. The first issue to be faced is whether or not the obligation necessary for a stable society can be referred to some act of consenting as we have here made out.

## CHAPTER IV

### CONSENT AS THE SOURCE OF POLITICAL OBLIGATION

Applied to political theory, Lockeans say consent is the key feature of two kinds of relationships: that between the state (or sovereign) and society and that between the individual and society. Walzer is one of them. The first question is that of legitimate authority while the second is concerned with individual obligation. Accordingly, I shall tend mostly to the second question in the next three chapters. The question of rightful authority will also be addressed although this issue is one which Walzer attempts to reduce to questions of individual obligation derived in a rightful manner.

To begin, I offer the following points, the first two of which derive in their main form from Locke. (1) One is only obligated politically by his consent. (2) The limit of this obligation, should one want to ask, is to be found in a proper understanding of what was consented to and who was concerned. (3) Conflicts of obligation are to refer to the consenting acts for their resolution. This chapter is primarily concerned with the first point. Since the

time of Hume, consent thinkers have been on the defensive concerning this issue. One reason has been the tendency to hold that legitimate authority, however, determined, allows a state to claim the obedience of its citizens without reference to their individual commitments. Another has been that if governments were required to demonstrate individual commitment prior to demanding obedience, no government would be stable. To illustrate, let me offer a sketch of a society in which obligation is accounted for in the way Walzer has in mind. We shall then consider why it is thought to be unacceptable.

#### A Society of Consenters

Persons in this society are Walzerian. They are committed only in so far as they have committed themselves. When there is a claim of obligation, the individual confronted is obliged to consider his position in view of his past actions, the deals he has made, promises he has given, security he has prospered beneath, and membership benefits he has enjoyed through the sacrifice of now one and now another of his cohorts. Others in the society may help him determine his obligation, but the only permissible evidence or rationale is the action of the individual concerned. A description of the institutions, rules, precedents, and common understandings

as to what the action in fact means are admissible, but nothing totally external to the individual's action whether it be the common good, the will of God, or the requirement to perfect an ideal goal of mankind is granted any force unless that has been agreed upon in advance.

These individuals certainly have personal ideals, social goals, private interests, and hopefully a concern for their fellows' needs. These factors enter into personal deliberations as to what they choose to consent to, but the individual does not have an obligation by virtue of needs, social possibilities, or personal interests.

On a more concrete level, we can imagine, as Walzer intends, that the things we consent to and are obligated by are multiple and changing. Persons who are more active, who believe in social action and who have the energy, time, and means to enter into such commitments, would be subject to claims over a large network of involvements. Others who hold back and take what security there is in life and accept its conditions, would be subject to fewer claims accordingly. Through the social milieu, there would be consents and obligations to the state. Some would be deep and farreaching as when a ship commander steps aboard his vessel and understands that should the ship go 'in harm's way' he will be the last living person to

depart. Other state connected obligations would be minimal, and many persons would incur no more than the requirement to keep the peace and not interfere with the rights of others. Eric Hoffer would be content here. A person who wanted to be left alone would, for the most part, be left alone. He would in all probability incur some obligation in voluntary deals made to allow for the management of his private finances. His willingness and his actual deeds of pressing for his own rights might implicate him in an obligation to respect those of others and preserve, under severe threat, the society in which that sort of life is possible. All imaginable problems would refer to the actions of the person in question in determining what he was obligated to do. What he had consented to from a free and able position, with the relevant facts at hand, would be grounds for a valid claim of obligation.

#### The Critique

As long as one remained within consent theory, there could hardly be any objection to the effect that this society would be without adequate social bonds. Nor would there be any sense in holding that persons would be immorally bound. Walzer says the bonds we ought to have are the ones we have created. The bonds in society's interest are the ones which interested members of society

have brought upon themselves. There is room for prudential judgements of course. We might say of Mr. Jones, he has committed himself in so many areas that he is bound to encounter conflict. Of the hermit, we could say that his life was barren due to his refusal to involve himself with others. But these are not moral judgements in the sense that they relate to claims or blameworthiness. Mr. Jones is not immoral; he has simply set himself up for some tough moral problems. The hermit is not wrong; it is just that his manner of solving individual social problems appears unbalanced and extreme to us.

Theories, however, are not judged from the inside. While the results of Walzerian interaction are bound to be 'just right' if consent is taken seriously enough, it is held that the results, in fact, would be neither just nor right. The grounds for these objections which I wish to discuss are two: a moral and a political contention. The moral objection is that the theory allows too much. Persons can consent and be obligated to tyrannical, unjust regimes and to pacts requiring immoral action. The question of obligation to an unjust state will be discussed in Chapter 5. To the last objection, the important thing to ask is, "Immoral by whose account?" For our consenter, it should be recalled, is necessarily a continuing morally autonomous person.

The second objection, the one I am calling political, has two parts. The first is that the state's claim to legitimacy in such a society must refer to the consent of the citizens. And this is unlikely unless one admits to Locke's notion of tacit consent. But if one admits to this notion, then consent is so automatic that legitimacy does not in fact rest upon it at all. In as much as it is said to do so, legitimacy itself is automatic. Locke and any who would be his followers are seen to be faced with this dilemma: rubberstamp the state or deny its legitimacy altogether. I know of no modern thinker who has taken the first option though Robert Nozick may be thought of as having investigated the latter choice quite fully.

As for Walzer, he shows how modernly individualistic he is in refusing to face this choice directly. He stresses what, on page one of this chapter, I called the second key feature of consent and political relationships. This is the relation between consenting and an individual's obligation to the society or the state. He chooses not to establish a standard of legitimacy and then reason to individual requirements. The alternative is to construct a standard of rightful incurrence of obligation to the state. One then reasons from this to a description of the state's rightful powers. 'Legitimacy' thus becomes an abstraction, and one which does not do

much work in Walzer's system. 'Justice' receives the same treatment. We shall see in Chapter V how it collapses, for Walzer, into what I call "the effectiveness of consent."

But if Hume was alive to the problems in Locke's argument for legitimacy, modern versions of the contract theory have also had its critics who argued essentially in the same way. This Walzerian society, it may be held, cannot assure that the obligation which is necessary for the state to have effective, actual authority will obtain. The state is not assured of the power to provide security, much less stability, in this scheme. This is the second part of the political objection, and it is the one which strikes most directly at Walzer. It is a point made both by Hanna Pitkin and J. P. Plamenatz. The empirical entry in the argument (5, below) does not differ greatly from the attack upon consent as the source of legitimacy.

- (1) Society requires the state.
- (2) A secure, stable state requires obedience of its citizens.
- (3) Consent is said to be necessary for rightful obedience.
- (4) If 3 is true, then consent must be a universal requirement.
- (5) Consent is not universal. If it is defined so that it is universal within a state, then the power of that state does not rest upon the free choice of its citizens.

The thrust of this attack is against 3. In attacking, critics have moved in two directions. First, it is claimed that any notion of choice which has only one answer is no choice at all. This in application is the point of the second statement in 5. It is true. The other move is to hold that consent theory must admit that there is no choice in the matter. This is an interpretation of 2. I now wish to question the truth of 2, at least in its simple form, a form necessary for its function in the above argument.

If it turns out that required obedience is in fact limited, then the notion of tacit consent, which has been called "the real battleground of consent theory,"<sup>1</sup> may not have to stretch so far as to make consent a politically necessary truth.

Why is it held that political obligation is necessary for the state? If obligation is taken in the weakest sense, the requirement to generally keep the peace as defined by the state, the answer seems obvious. No one in a society can claim that he or she is free of the law. But this by itself is not true. Persons can claim this and we are not likely, in the United States, to move against them. What is actually required is much less: we cannot allow persons to act on such claims. And while this, as a logical point, appeals to the generalization argument, it too has exceptions as Ronald Dworkin points out.

Society 'cannot endure' if it tolerates all disobedience; it does not follow, however, nor is there evidence, that it will collapse if it tolerates some. In the United States prosecutors have discretion whether to enforce criminal laws in particular cases. A prosecutor may properly decide not to press charges if the lawbreaker is young, inexperienced, or the sole support of a family, or is repentant, or turns state's evidence, or if the law is unpopular or unworkable or generally disobeyed, or if the courts are clogged with more important cases, or for dozens of other reasons.<sup>2</sup>

Add to this the fact that certain persons in states can, and probably do, live primarily by moral codes which are socially derived, as are the laws. These codes, therefore, coincide generally with the law. These individuals, however, might not hesitate to break the law if the time came. Assuming that the time has not come, can we say that such an individual has admitted to his obligation or has pledged his obedience to the state? If not, in what sense is it necessary to the state that he be obligated or be obedient? What the state actually requires of everyone is civil behavior of a minimal sort. But civil behavior could describe the situation in a Walzerian society without resorting to an absolute claim of obedience on the part of the members of the state.

The blanket claim for political obligation can be seen now as a general point, a bit of conventional thought, which discourages persons from treating themselves as social exceptions. As such, it is not without counterclaims of equally longstanding respect. In as

much as the claim we are questioning is closely akin to the requirement to obey the law because it is the law, no questions asked, perhaps this is also something we have a rational appreciation for but have never fully accepted. H. L. A. Hart brings this out in "Legal and Moral Obligation."

The recognition of an obligation to obey the law must as a minimum imply that there is at least some area of conduct regulated by law in which we are not free to judge the moral merits of particular laws and make our obedience conditional on this judgement. In a modern state it seems most plausible to suggest that this area is that which includes matters of defense and economic welfare but excludes, say, matters of religious or esthetic taste. Do we in fact recognize that we are bound within some such area to obey the law as such? There is at least a plausible argument that we do not in fact recognize any such obligation. . . .<sup>3</sup>

Hart goes on to say that while this is plausible, it is not convincing. It is even less convincing, and more complicated, in a state which claims government by consent. This is so because the law is what, by some means, the persons who are obligated to it have chosen or altered to suit themselves. It is more convincing however when considered in the context of externally imposed laws. And this is, after all, what those arguing against consent are arguing for.

In attempting to loosen the claim of obligation which a state is thought to require of its residents, have I succeeded in showing that obligation is not at all necessary? Not at all, and

I have no interest in doing so. The point is that necessary obligation is limited, and it is irrational to ensure 'enough' by making everyone out to be completely committed. Consent critics have been quick to point out that many persons have not consented. It is thus a due retort to mention that states have never (or hardly ever) actually had citizens who feel or act obliged to the extent that governments claim as necessary.

#### Military Service

Political obligation as a requirement for keeping the peace, though it does not entail the farreaching, sometimes jingoistic claims which have accrued to it, is a "reasonable doctrine" as Walzer admits.<sup>4</sup> Theoretically, it is the most crucial argument against 'obligation by choice' if it can be made out at all. I shall come back to it shortly. But 'the peace' is not all that the state has in mind when insisting on this primacy of obedience. A real motivating factor in producing the rationale, as far as the states are concerned, is that they must at times fight for their own lives, existing as they do in the international state of nature. When this occurs, they claim that they need all their residents and, if necessary, may call on all of them in the effort. The move toward this obligation is done in the name of the law just as the

appeal to necessary civil order was. As Walzer says, these arguments concretely come down to the issue of military service.<sup>5</sup>

Here too it seems, to a careful view, that absolute obligation to the state is not actually necessary. 'Back home' does not run itself no matter how desperate the front. Historically, no great percentage of the populace engaged in wars, and even in recent times with large standing armies and multiple war industries, there is no basis for a claim that a country needs all of its citizens to join the war effort. A country, and its soldiers, suffer from the lack of moral support on the homefront, but calling moral support an obligation, in the sense we are using the word, is even more difficult to make out.

One interesting way to look at this is to take an oblique view of work done, charactistically by Catholics, on the problem of innocence and the killing of the innocents in modern warfare.<sup>6</sup> John C. Ford's investigation included the task of trying to actually count, roughly, the innocents in one society at war (the U.S. during late World War II). By his account, the innocents outnumbered the combatants by ten to one. Considering the number of voluntary enlistments and previously employed professional soldiers in the U.S. armed forces, the problem of having to press political

obligation as a means to waging that modern war did not arise. And there is no need to say it could have arisen for the vast numbers of non-combatants.

My conclusion is that political obligation need not be viewed as unlimited, or even as unlimited as is assumed in the argument against tacit consent. If conclusions here are a starting point for determining the adequacy of an account of the source of political obligation, the requirements of adequacy are not nearly so great as they may at first seem. Admitting to these requirements absolutely and taking the language seriously--attempting to handle this charge within consent theory itself--was Locke's mistake and the reason for his illicit extension of the notion of tacit consent. Those who would require total commitment or else emigration, revolution, and treason, would be doing so with no good reason.

#### On Locke

Walzer's discussion of Locke will serve to clarify his position and allow us to understand his own idea of how tacit consent works here. What, in the modern state with power far removed from the individual, does a resident owe to the government?

In an important sense, only liberal (I mean chiefly Lockeian) theory is capable of answering this question, for only the

liberals have been entirely accepting of the transformation in scale and of the new individualism it has generated. I want to argue that the liberal concept of tacit consent provides a key to understanding the new relations between citizens, or rather some citizens, and the state.<sup>7</sup>

Walzer makes tacit and express consent in Locke out to be parallel to the notion of perpetual or temporary allegiance as worked out in English law and formulated by Blackstone. That distinction obligated a natural born citizen forever, while residing in the "territory" only obligated one for the course of that residence. Locke applied this by envisioning obligation deriving from tacit consent as temporary while express consent made that obligation permanent. The nature of the obligation was the same, however, and it is just at this point that Locke becomes incredible. Walzer does not wish to modify the understanding of what constitutes tacit or express consent, even though I do not think he would argue for or from Locke's famous examples concerning inherited property or the use of currency. His difference with Locke is over what the different kinds of acts may be taken to mean. His idea, as expressed in the first chapter, is that different kinds of consent result in obligations of different stringency and kind. Being a citizen for example is more than being in a society, it is being committed to a particular political arrangement.

This is the area where express consent is most likely, and the area where a resident may blow the whistle and state his own previous failure to consent as a cause for exemption from certain state-function requirements. Being in a society, however, is not license to enjoy others' sacrifices and commitments without incurring a debt if 'being in' means anything other than bare presence. Simple enjoyments of security is reason enough to require an individual to refrain from infringing on the rights of others. Tacit consent, in the main, can result in only negative duties by Walzer's account.<sup>8</sup>

I write 'in the main' because there is the last ditch claim which the society-through-the-state is likely to make and should be able to make according to Walzer. This is that the condition for living within a country's boundary is being subject to the requirement to protect it, by force and at the risk of one's life, if the threat is to the society itself, a barbarous invasion being the classic example. Hellenic Athens serves as a historical example of this practice; non-citizens could be called upon to defend the city but not for a field battle. Thus the claim to ultimate obligation still stands. The political alien who has expressly consented to nothing, and so is not bound to any political purposes, is nonetheless "bound to respect the regulations and to join at

critical moments in the protection. But that is all he is bound to do."<sup>9</sup> This reasoning culminates in the principle: respect the differences between tacit and express consent. This is a principle to be put to use by the state itself.<sup>10</sup>

This thesis, which rejects the issue of perpetuity in favor of various stringencies, seems to move us in the right direction. But I think Walzer is guilty of forsaking consent in the issue of the last ditched claim of society-through-the-state. The logic of this claim is not consent logic but the logic of state requirements. It does not encourage us to look into the 'moral biographies' of individuals who are being held responsible to society. It makes their obligation true by definition, by bare presence. A defense could be forged by saying it was the society which was making this desperate claim, but it is always the officials who actually make it. Furthermore, as we have seen, they make it even when there is nothing like a 'barbarous invasion' at hand. It is always helpful to think of the enemy as barbarous. In fact, what the conventional claim for necessary obligation most plausibly is, is a claim to be able to determine when such a claim is to be made. And even Walzer does not leave this up to the individual at the 'critical times.'

For the most part then, when Walzer says, "that is all he is bound to do," he is describing minimum obligation to not take

advantage of others in a protected social environment. But when he mentions fighting for the society, he is speaking of ultimate obligation however rarefied the conditions. On pain of inconsistency this should require a stricter kind of consent or some other kind of reasoning or both. In a manner to be explained shortly, I opt for another kind of reasoning.

#### Requirements Beyond Consent

The greater part of the previous discussion has been an argument for the mitigation of claims of obligation by the state. I have intimated that the conventional position is a conflation of simplistic rhetoric which cannot be made out by any real state needs. This argument, though not without evidence, is quite general. Nothing said precludes there being a situation in which the state does require  $X + n$  from its citizens when, by their determination of their own commitments, only  $X$  is due. It may be held that responsible governments must assure themselves that they have the legal power (which they certainly do) and also the moral right (which is under discussion) to account for the needed  $n$ . I do not think that a legitimate way of doing this is to always claim the requirement  $X + n$ , nor to claim that  $n$  is in fact unlimited or absolute or necessarily primary. On the otherhand, to maintain

that one can use consent to meet the requirements--that the requirement is always equal to or less than X--is an empirical statement which is at least not always true. It is not true of those states in situations in which nothing anyone or everyone in the society can do, whatever its moral status (for instance the suicide plans and operations of late World War II Japan), is adequate to meet the needs of the state.

At times like these, perhaps these are Walzer's 'critical times' (I am not assuming that Japan or any state with this policy knows that the cause is hopeless), the idea of consent cannot serve. This, however, need not be taken as a theoretical problem or even a practical problem unique to consent. There is no rational guarantee that when a state exercises its total moral prerogative over its territorial residents that it will have secured enough power to defeat an enemy or even handle certain kinds of internal disorder. I take it that no theory can do this, and no morally serious political theory can ever say that all rights, all constraints, all moral stops may be disregarded in the manner a state relates to its residents. The only conceivable exception that occurs to me is a theocracy in which there is a texture of interrelationships and a moral and political self-containment unthinkable in the modern state. In short, to say that a state is necessary is to say that

in that state, morality is subject to being considered unnecessary.

Most critics of consent who say it does not produce the obligations we wish to claim would not wish to claim this much for the state in any case, at least I hope they would not.

But what if the 'n' is not obedience in defense but a minimum of civil behavior which I have already admitted to? This is quite a different issue. I have presented a case which chips away at the myth of unexceptional, extensive obligation as a necessity for civil peace. Much more could be said of this. The whole area of civil disobedience and conscientious objection, which I have only alluded to, might be brought to bear at this point. But if anything, I feel that the case is overstated already. There is this stubborn fact. We do wish to claim a minimum, general requirement. It may be illicit to reason from a minimum general requirement to a maximum general requirement the way Locke does, but the minimum general requirement must be accounted for. To cover this, Walzer makes out a minimum general consent, though not in these open terms. It seems to me that this is precisely what cannot be said of consent. It cannot, by necessity, meet any standards either in range or intensity. The 'critique' is correct in holding that once reasoning starts from a specific quantity of obligation, however small, consent is not a way of insuring it. We can give up the idea of a

certain state, the suggestion above, but we cannot give up the idea of peace within a society, or at least peace which holds except in very special circumstances. This seems to be the limit of consent, and those who accuse Locke of stretching consent to mean whatever it must mean, are correct in saying that some other kind of thinking seems primary here.

Walzer might deny this. He could hold that society is such that persons just do have previous commitments which require mutual respect and peace keeping practices on their part. I can only notice that, as an empirical claim, this is set up but not actually made out. It suffers from the fate of many sociological generalizations, trying to fit in the small space between being untrue and tautological.<sup>11</sup> The important thing is that even if it were true, if it were shown that a person could be free if investigated according to Walzer's idea of consent but bound by certain basic laws, I would want to hold in some cases that the law had moral force and deny the adequacy of consent. If it may be held in some cases, theft for instance, then the point against consent is made. This is the stubborn fact which consent theory has not yet met.

At the point of the requirement for and duty to obey at least a minimal, "nightwatchman state,"<sup>12</sup> I think it best to fall back on a position that coincides much better with our intuitions,

conventional wisdom, and historical witness. Persons are justly subject, though I would not say obligated, to a state's peacekeeping purview. This may be backed up in several ways. I can only suggest them here. First, one could remain well within the consent tradition and hold, as Locke did, that persons have rights. Nozick builds his entitlement theory on Lockeian 'property right' thinking and includes a justification of coercion concerning theft, fraud, and the keeping of contracts. Closely akin to this is the idea that consent itself, resting as it does on freedom and a condition against coercion and deception, presupposes these conditions. This is essentially a theory of justice or the condition of justice. "Civil liberty of the most extensive sort is, therefore, the necessary condition of political obligation and just government."<sup>13</sup> The 'state of nature' as described by Hobbes provided a kind of liberty, but this was certainly not civil liberty. A society which provides itself with the means to create these necessary conditions cannot be described as wronging those persons who are residing by requiring non-interference of them. The problem with this is that there appear to be two governments, one which is always just due to its function--which is minimal--and a second which may be unjust. Perhaps this is Nozick's point. A third possibility, which may not appear significantly different, is that mutual non-interference is a, or perhaps the only,

natural right.<sup>14</sup> A society is justified in providing an enforcement of it.

An example of a state's just powers which do not derive from consent are simple rules of the road. These are generally neutral rules: we decide to drive on the left or the right. In a democratic society, this may be changed by choice. If, however, I enter a highway tunnel on the right side of the road and have a head-on collision with an Englishman, there will occur sooner or later (assuming we live) a reckoning as the fault and a discussion of requirements. The argument, I think it safe to say, would lay no great stress on any previous commitment he is supposed to have made. We would hear phrases like "in England" and "over here." The focus would be on the right of anyone to count on everyone to drive on the right side of the road in tunnels here. Singular obligations appear to miss the point here; the requirement is perfectly general both to whom it is owed and who owes it.

It would be straining the matter to try to bring in consent. The Englishman is obviously not aware of some required relevant facts. His enjoyment of the road may be used to reason that he keep the rules, but this enjoyment, as Walzer is wont to say, takes time. I do not think that we wish to grant him any time on the road at all without pressing him to the rules. Nor are rules of the road

and many similar kinds of arrangements, more binding as one enjoys the highways more and more. These minimal requirements quite clearly do not rest on or correlate to commitments.

In conclusion, it is too much to claim that all requirements necessary for social living are obligations which reflect voluntary choice. The more morally significant duties, however, cannot be assigned at will and without limit using the minimal requirement rationale. The "fundamental coercive power," that power not resting on the prior commitment of the person to whom it is being applied,<sup>15</sup> is, due to the reasons of its justification, extremely limited. Consent, understood over a broad range from willful membership including oaths and ceremonies to mutual understandings confirmed in previous actions, constitutes a richer and more liberal range of obligations and allows extensive claims and expectations by the same means.

## CHAPTER V

### CONSENT AND THE LIMITS OF OBLIGATION

In the last chapter, the concept of consent was applied to those persons whose obligations were difficult to make out: the political alien, the passive, the silent. It is now time to turn to those whose obligations are more easily set but problematic in another way. They are doubtful due to the moral posture of one of the contracting parties or because of the kind of act to which one is supposedly committed. The first concerns being obligated to an unjust regime or in unjust circumstances. Comments here attempt to reply to the criticism that consent may allow too much. The second concerns a group of actions which are extreme and require moral justification. Following Walzer, I shall discuss the 'obligation to die for the state' as an example of these.

#### Injustice and Obligation

Walzer's stand on injustice of the state and obligation has already been put. "Where justice is not done, there is no legitimate state and no obligation to obey."<sup>1</sup> If this were expressed in

contemporary political life, we would offer the speaker our hand in friendship, his heart being with our heart. But what does it mean? This is the kind of position that Rawls would call a provisional fixed point, and its sense is not so clear as the feeling that it must be right. It is a position to be queried.

The first question concerns the definition or criteria of justice. The second has to do with the degree of that designated 'justice' which must obtain for obligation to be valid. Definitions of justice are, as they should be, extremely ambitious. Persons making justice necessary for anything are driven, as Rawls is,<sup>2</sup> to qualifications such as, 'just as is reasonable to expect,' 'just as possible in the situation,' or 'just as the function of the agency's purpose allows.' This is not a simple qualification which frees us from the trivial requirements of perfection. It puts the standard for obligation adrift. Reason should prevail of course, but it is always up to men to implement rational procedures. The question again comes down to this: who will decide? Most states would claim the ability to correct themselves and hence judge themselves. Locke, on the other hand, thinks that the oppressed must determine when the "appeal to heaven" is to be made.<sup>3</sup> The first course would seem to prevent external judgements of injustice; the second seems to license the individual.

This problem, however difficult, does not blunt our intuition concerning their being justice nor its place in limiting duty within the social scheme. No obligation is owed to an unjust state. Assuming that we may get clear on the issue of injustice itself, how are we to judge obligation which involves us, as most obligations do, with society? The answer waits, in its practical application, for a separation of state and society, a difficult task. Hanna Pitkin uses the example of a Nazi official in a minor capacity who believes he is thereby obligated to the state. She does in order that we may see that someone who does what he has consented to do is not thereby performing his "true obligation."<sup>4</sup> This example is obviously shorthand for 'a situation where justice is not on the side of the state if ever there were one.' If there are doubts and problems with this it would seem to indicate that this kind of thinking itself is doubtful.

As for the official's obligations, I cannot say what Pitkin has in mind, but assuming he is the water commissioner of Hamburg or the police chief in Berlin, we may ask these questions. Is the commissioner to resist the reich by allowing the people of Hamburg to want for water? Is the chief bound to encourage criminal activity within the city of Berlin? The oath they swore on their appointments to Nazi posts concerns their jobs. We might be able

to invent a minor official, though it is unlikely, who could have shortened the war and ended the internal injustice in Germany sooner. But I think that any blanket statement concerning the nullifying of obligation due to injustice is bound to run afoul this fact: obligations to the state are likely to be functional and important for the well-being of our fellows.

What is clearly lacking here is some meaningful connection. Some injustice somewhere in a political system, even extreme injustice, does not invalidate all obligation generated within the society which is tied to governmental jurisdiction. This is like saying that one cannot have an obligation to persons with moral flaws. It is too broad a reasoning from the desert of the claimant to what is actually obligatory. The dim, Deuteronomistic view of man's unworthiness is replaced in liberal political theory by egalitarian considerations of a positive nature. All persons are of equal dignity and are to be respected equally in considering our commitments to them. But clearly all governments are not. Rights, such as governments have, seem to follow from function and performance in a manner different from persons' rights. A first step then is to set off the realm of the individual and the institution and insist upon different virtues. The distinction itself is a problem. If one wishes to hold with Walzer that corporations come under the criteria

for judging institutions, what degree or kind of interaction constitute corporateness? If I hire an individual, am I then judged by the criteria of institutions or of individuals? What if I hire 30 individuals who each hire 300? Perhaps institutional criteria becomes applicable when I hold a monopoly on certain services.

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Perhaps it is when a certain depersonalization due to scale takes place. I shall return to this in considering Walzer's discussion of 'civil disobedience and corporate authority.' For now, it is enough to note that governments are institutions clearly enough, and that our obligation to them depends on moral quality peculiar to them if our stand on injustice is to be made clear.

Another move which would make this limit of obligation more applicable is to specify whose obligation is invalidated. John Simmons suggests that we cannot be perfectly general about whose obligations are invalid even if we agree that injustice puts obligations in question. Injustice only affects the obligations of those persons who are treated unjustly.<sup>5</sup> It is certainly true that, say, in the example of social oppression, that the oppressed stand in a different relation to the government than those who are concerned for the oppressed. But Walzer and others wish to claim that plights may be shared and that decisions concerning a just government reflect the whole citizenry. "The myths of common

citizenship and common obligation are very important to the modern state. . . .<sup>6</sup> Though these myths cannot determine real obligation, they do come into play when trying to agree on issues like injustice. That concerned citizens of a state could consider injustice a fragmented, personal affair, which only concerns the victims, is to Rousseau unfathomable. It is like saying that a rational man can let his fingers scratch out his eyes.<sup>7</sup> And there is something deeply objectionable in the image of two classes of residents, one free of all duty but unjustly used, and the other, bound by legitimate obligation and treated well. Though Simmons' proposal will not quite do, there is a sense in which justice varies and the victims of injustice stand differently to the state than others who are concerned but actually unaffected in their lives. Walzer discusses 'the oppressed' and 'the activists' in this connection and does allow that obligations vary in response to state treatment.

Walzer's solution to the problem of injustice and obligation is consistent with his general thesis. Early on in Obligations, he states that 'justice' is to be understood in terms of consent.

"In the context of consent theory, we do not say that the government is just, therefore the citizens are obligated, but

rather that the citizens have committed themselves, therefore the government is just. . . . Governmental powers are exercised by right only if we have actually granted that right."<sup>8</sup>

This is a common position for democratic theorists to take.

Michael Slote also thinks that consent has a place in determining what is just, holding an arrangement by consent, as opposed to an arrangement by desert, as a description of a just society.<sup>9</sup> The problem with 'justice as effective choice' is that problem in democratic theory presented by those who engage in the process of choosing, but who, in Locke's phrase, are not 'the greater force.'

As a logical problem, it has been called "the paradox of democracy" by Richard Wollheim.<sup>10</sup> Wollheim does not use consent in his discussion, but Plamenatz does in this same connection. He wastes no time on the problem, saying that in a pure democracy, persons only consent to what they vote for.<sup>11</sup> But Walzer holds that we commit ourselves to persons when voting. We only give assent to laws, bills, and candidates. The logical problem mentioned, and many others,<sup>12</sup> need to be faced, but the question of obligation is to be answered by looking into commitments implied by our common participation.

This is no more than a logical puzzle as long as I am now on the losing side and now on the winning side of group decisions.

But what if the minority status becomes continual, if my quality of life is affected by my inability to convince the majority? It would appear that my commitment is being used against me. This is popular oppression. Walzer asks, "What are the obligations of the oppressed minority in a state where only the members of the majority are entirely free and equal?"<sup>13</sup> To answer, one would need to know about the oppression. He offers this general description which is easily understood as picture of the American black community.

They are free to organize, but they face a thousand petty difficulties. . . . Patterns of social and economic discrimination reinforce their minority political status (and their political weakness reinforces the social and economic patterns--it hardly matters which way the causal connections are worked). The pressure they can bring to bear within the political system is limited. Their day-to-day lives offer them little hope. They are trapped in the moral and political ghetto--in a country that is still in some serious sense open and democratic.<sup>14</sup>

The last statement is significant. If only the oppression were clear and intended. Walzer agrees with Rousseau that slaves have no obligations to their masters. But "Democratic oppression is more subtle and confusing, in large part because of the way in which the oppressed people are within the democratic system, enjoying the formal and some of the real benefits of membership."<sup>15</sup>

Thus minorities who are oppressed by a society in which choice is possible are not altogether free of obligation. Walzer's move is in the direction of correlating, in an inverse manner, the failure to exercise effective choice with resultant obligations. This is against the general liberal position that justice, in a simple and determinable sense, is a crossroad for the individual. In Locke's society one is either an alien, a citizen, or a revolutionary. This is not the case in Walzer's.

So long as activists on behalf of the oppressed appeal in fact to other men and find channels available to do so, they incur obligations within the political community that makes the appeal possible. This is what it means, the least that it means, to act within a democratic system: that one is bound to respect the general freedom to act and the lives of all possible actors. It does not mean, however, that one is bound to obey every law, or pay every tax, or even to defend the state. For these are the obligations of free and equal citizens.<sup>16</sup>

Walzer conflates the activists (the concerned) and the oppressed above, but it is clear that participation is consent and implies obligation.<sup>17</sup>

Walzer's conclusion is that highly active members of a society whose activity is ineffective have reduced positive obligations in much the same manner as voluntary non-participants. On the other hand, there are strong negative duties, an important fact for active groups. This is due to the fact that system utilization

is being attempted. This has the odd implication of making apathy appear to be a license (with certain limits) and making forthright political participation in favor of some minority doubly frustrating, i.e., in itself and in the limits it imposes.

Does Walzer's definition of 'justice as choosing' and his rejection of a general measure of tolerable justice fit our convictions concerning injustice? At the extremes of perfect representative democracy and absolute tyranny, it does. In the actual case where 51 percent rule and the rest are subject to undesirable measures due to their commitment to the group, the status of the minority still appears doubtful. This is so because obligations cannot always be avoided due to minority status. Majority measures do hold for more than the majority. To claim otherwise is to undo democratic theory altogether. Another possible criticism is that this thinking fits our convictions all too well, that to dissolve the problem of injustice in the logic or administration of democratic institutions is necessarily to deny that any state other than a fully efficient democratic one can be just. This much speaks against Walzer's conclusion, because justice, as intuitively understood, does vary between states which do not admit to democratic procedures. Whether this variance can be made out to be one of degree with democratic institutions being necessarily

more just is not a question which I shall try to answer. The possibility that Walzer's devotion to democratic ideals or ideology may be a problem will be considered in the following section.

#### Civil Disobedience and Corporate Authority

This section heading repeats a chapter title from Walzer's book, a work first published in Dissent in 1969. I pursue the issue raised there because it is a carryover of the basic position on justice or a curiosity of his idea of consent. I shall discuss it in this context rather than as a general theory of civil disobedience.

The persons Walzer has in mind in discussing this issue are laborers and students, the 1969 date being significant as closely following student demonstrations in some major universities in this country. To understand this position, recall the division made earlier between institutions which require legitimacy and individuals who do not. I questioned this division by asking when an individual founding a corporate group came under this standard. Walzer does not answer this question, but it is obvious to him that the requirement of justice is not leveled at the state because it has a function requiring a monopoly or because its only rights as a governing body derive from its function--to serve. Justice does

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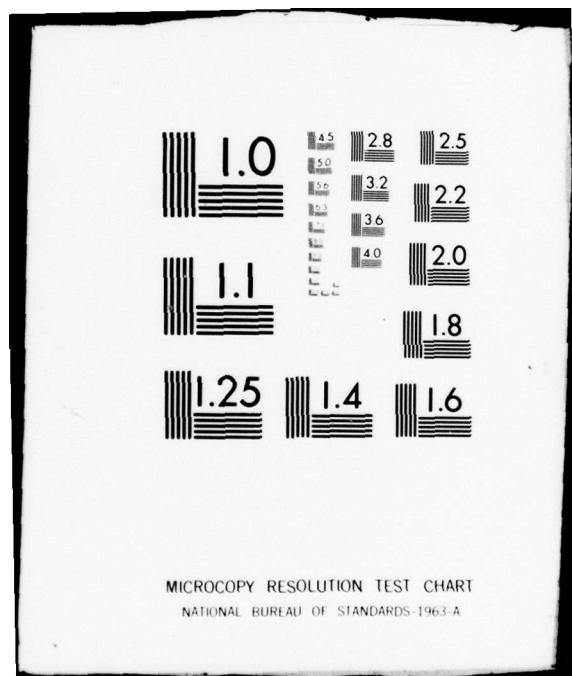
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not correlate to primacy. The state must be just because it is an institution with some power. Corporations and universities have less power, but they are institutions with some power. They too may be unjust. Since injustice is a matter of a lack of continuing consent, the nondemocratic nature of corporations is a problem for Walzer.<sup>18</sup> On the other hand, working for corporations is generally considered voluntary activity.

They join the firm, go to work in the factory, enter the university, knowing in advance the non democratic character of all these organizations, knowing also who runs them and for what purposes. They are not deceived, at least no one is trying to deceive them, and so they are morally bound for the duration of their stay. However subject they may be during that time to authoritarian pettiness and to oppressive rules and regulations, they are never captives of the authorities. Their citizenship guarantees their ultimate recourse; if they don't like where they are, they can leave.<sup>19</sup>

At one extreme, the question may be put like this. Does the fact that you hire me require you to democratize both our relationship and subject the operation for which I was hired to democratic administration? At the other pole, we have this question? Does a corporation have the right to do whatever it chooses concerning its employees (I assume that the corporation is only exercising its appropriate power, i.e., in job related activities) because the employees consented to 'take orders' at the time of hiring? It seems to me that in trying to answer these two

questions, Walzer forsakes his consent thesis in favor of a reasoning toward corporate obligation which derives directly from democratic ideals. He holds that if an individual waives a right by means of consent, he may still claim that right if it is a right which the state guarantees for all of its members. He uses the right to strike as an example.

Corporate officials may offer him a trade: we will pay you so much money, they may say, if you surrender the right to strike. That agreement, whatever its moral force is not legally binding so long as the right to strike is recognized by the [democratic] state.<sup>20</sup>

Thus far, he has only shown how our legal and moral requirements may differ. What is an individual in the situation above actually justified in doing?

I want to suggest that disobedience of corporate rules is probably justified whenever it is undertaken in good faith as a part of a struggle for democratization or for socially recognized rights.<sup>21</sup>

These rules are rules which the persons in question have agreed to follow; they have freely consented to the corporate officials concerning them. I should think that by Walzer's general program, we should at least have to look at the specific cases. But no. A blanket priority is assigned. Whenever it may be done as a part

of "a struggle for democratization" or for "socially recognized rights," going back on our consents is justified.

The first justification, democratization, implies that there is one social cause, the furtherance of which, exempts us from our individual moral requirements. While this is at one with his general democratic sympathy, it seems in this instance to be utterly inconsistent with his main thesis: persons commit themselves and in going so effect moral changes. These changes are moral and persons should honor their commitments. Walzer wants a society where consent counts, but he is willing to forego the force of consents to achieve it. I am accusing him of holding a position equivalent to that of the young, brilliant, but penniless capitalist who says, I shall have to steal in order to found an honest business on a firm footing. A more general point is this. If Walzer is willing to sacrifice his morality for a social cause, why should not everyone else?

The second justification for going back on our consent was "socially recognized rights." Walzer seems to be saying that we cannot waive these. But what rights are not socially recognized? I am afraid he is committing himself to saying that we cannot waive any rights at all at this point. And this is clearly too strong.

If we cannot waive some rights, we give up a great deal of social freedom in having them.

Walzer would not appear so open to this criticism of outright contradiction if he fell back on a disqualifying condition in the act of consenting. If he held that persons who consented to work under duress or involuntarily or in ignorance of their rights, were justified in appealing to rights of citizenship against the corporation or university, he would be consistent. And I think he would be correct. But there is nothing in the consenting act generally described as 'hiring on' which is suspect because of conditions listed in this study. What is more important is that Walzer cannot fall back on this reason for disallowing the bond due to consent. He wishes to maintain the bond, to support the individual's claim on the corporation. Nullifying consent, since it is mutual, would only serve to cut the corporation loose. It would justify the company in saying, "You may go elsewhere and we may run our business as we please." Walzer is stretched to say that the corporation has consented to enlarge internal consent in the act of hiring.

I do not wish to hold that a person's initial consent, a deal made over money and hours which is confirmed by working and being paid, does not imply anything else. Persons give their lives

to companies, and companies may have a moral obligation to them beyond explicit agreements. But companies differ from states in that the rights of those persons we call 'the company' do not exist solely from their function as company officials whose first duty is to the 'company citizen.' This is the case with public officials. It seems reasonable to call for and work out a more explicit account of these obligations rather than prejudge them as maximum democratization.

#### Ultimate Obligation

What is the limit of political obligation? May it be accounted for by consent? Walzer approaches this topic by inquiring into the situation in which the state calls on its citizens to make the supreme sacrifice. "(C)an an individual citizen be obligated to make the safety of the state the motive of his voluntary death?"<sup>22</sup> In considering this issue, I wish to refer to the second chapter of this study where the range of what is admitted as an obligation is sketched. I agreed with W. D. Ross that one cannot have an obligation to feel anything or to have a certain motive; this is out of the range. Thus, when Walzer asks a question concerning our motive, I tend to think that this cannot be an obligation at all. But it seems, on further consideration, that he is

asking something other than whether or not I am obligated to have a motive. He notices something that is undeniable; men do feel and act as if they are obligated to die: for God, ideas, family, friends, lovers, institutions, and other things as well. When the state makes war, the above reasons come into play. Men are motivated at the call of the state due to various kinds of identification of the state with the goods of private life and other rationales as well. But is it correct to hold that no other motivation than the state's call is adequate? May we be obligated to die for the state when there are no "accidental reinforcements" of the obligation? This is his question.

Before looking into Walzer's answer, I wish to raise two questions, which if answerable, will move us a long way toward a possible solution. (1) Does Walzer's theory of consent allow even the possibility of an obligation to die? (2) Since we do not lay down our lives as a ransom or blood sacrifice for our country, must we speak of an obligation to die? May we speak only of the less extreme obligation: to risk death?

The first question is relevant for Walzer because of a condition of consent which has already been set out, that is continued moral autonomy. How can one continue to be a morally autonomous person if there is no continuance? Literally, this is

nonsense. The example used to illustrate the limits of consent covered by this condition was slavery. How is dying different from submitting to slavery as far as responsibility is concerned? Like Rousseau and Mill, I wish to hold that submitting to slavery does not allow for an interpretation consistent with being responsible but that dying does. But can this be done on the basis of what has already been said previously? The way I propose to answer this question is to further explicate the condition of moral integrity.

The main idea is that if one gives up all moral recourse to the future, he is denying future responsibility. I held that a person cannot morally do this. One possible solution is to lean hard upon the fact that a dying person has no future. Thus it makes no sense to speak of responsibility or irresponsibility. In that case, the condition disallowing irresponsibility has no force. But this means that an act of dying can neither be right nor wrong and is clearly too strong. The answer does not lie in making the special sort of act which dying is a logically special case of consent, one to which the condition does not apply. Perhaps this can be done, but intuitively, dying is not necessarily--or even probably--an irresponsible act. I think the solution is to be found in considering the extremity of the alternatives offered in a

situation such as war. There are severe limits to the moral space one has in the face of grave risk which is encountered in combat situations. The question may be put in this manner. Is it justified by the logic of consent to say that a soldier may preserve himself at the cost of his fellows? Can he lean upon the fact that he must remain alive in order to face the responsibility of allowing his comrades to be killed? This is a complicated question. But I take it that the reader will sense the absurdity of saying yes. There are situations, war presents many of them, in which the most responsible act is not a preservation of myself for other moral reasons. I wish to hold that the responsible person is never morally justified in saying, "I will do whatever is necessary to meet commitment X." This is what the condition disallows. This includes the saving of my life at the cost of my fellows, my mission, my country. In short, this condition, which really requires accountability without exception, is not subject to a Hobbesian interpretation of 'self preservation first.' A person may consent to act responsibly in certain ways in the future. That act may cost him his life. If he knew it would be certain death at the time of the commitment, the question would be somewhat different. But even though I will maintain in the next section that one who faces this setting of war needs to come to grips with his willingness to die,

the consent is always to act in a manner which involves a high risk of death and thus a willingness to die if necessary.

The second question to be answered is, must we say that there is a call to die? Does the state ever make just this demand? Perhaps we are dealing in overstatement. I shall contend that we are not, even though death may always be a secondary description of what the state is demanding. To see that it is a secondary description, consider the following example. One soldier fights to the death while another is wounded and taken prisoner. The latter is released at the end of the conflict and returns home to lead a long and normal life. The first soldier made a greater sacrifice than the second, but I would claim that he did not have, nor did he meet a greater obligation. This is because, from recruitment call to direct combat orders, the command to die is not a primary description of what is being asked. Even Locke, who saw that men are sometimes expected to march up to the mouth of a cannon,<sup>23</sup> would admit that the order is, "Take that cannon." And cannons may be taken; sometimes guns are empty, unmanned, disabled, or made of wood.

The extension of these observations then is that we do not have the problem of Socrates in Crito. We only have to explain how one may be required to risk death. Carrying my aunt to the

doctor's office entails a risk of death. If I die doing it, no one would allow that I had an obligation to do so. Can we extend this thinking so far as to say that those who call men to arms may proceed without accounting for the fact that some, or many, will die? Can death seriously be thought of as an accident of war? As for the individual, is it feasible for him to consider fighting a bet and reserve a moral right to refuse death or a gravely high risk of death when the time comes? Earlier I indicated that this will not do. I would now like to give the reasons for this.

First, the state which calls men to fight does know that some men will die and that any man may be expected to die. Contingencies of war being what they are, if the state is to make assumptions as to what it is responsible for, it should admit that all persons are--by its order--subject to the most serious consequences rather than assuming that all the Johnnies will come "marching home again." A man never chooses to fight the way he chooses to drive a car. That is the critical difference between an accident count and a casualty list; I think it is a significant moral difference. Primary descriptions considered, responsibility and description of intent do not always correlate. To only admit to responsibility for what one intended is to be irresponsible. The state must think of itself as calling men to die.

The case of the individual is more involved. If consent to a contract requiring a risk of death is, in every case withdrawable in the face of actual or reasonable certainty of death, that withdrawal might equate to causing the death of one's comrades. It might jeopardize the mission and the society at large in a way which even outright refusal to fight at a previous time might not. Of course it might mean none of these things. The problem, however, can never occur if the person who has not consented to die (if necessary) for the state is not asked to. From the individual's viewpoint, allowing oneself to be responsible for the results of not meeting an obligation is questionable. Thus, the nature of war being what it is, thinking of war as a bet, in which one (in a private Hobbesian proviso) decides that he cannot be expected to pay up, is morally questionable. This is why we (or those for whom it is a practical concern) need to ask ourselves if we may admit to a general obligation to die for the state which represents our society. Anything less omits a most serious moral contingency. Having answered the questions as to whether consent admits to an obligation of this extremity and whether the willingness to die really is the issue, we now turn to Walzer's proposed solution.

His first step is to survey some classical answers of contact theorists. For Hobbes, this obligation is impossible. The

state derives from and has as its goal, the individual life. Dying for it is a contradiction. Fighting to the death, sacrifice, or even the position which Socrates took are inexplicable given the Hobbesian man. This fix, which Hobbes is in due to his psychology, is a danger or perhaps a shared problem for all individualist thinkers in the liberal tradition. Locke obviously believed in ultimate obligation on the part of soldiers. In The Second Treatise on Government, he writes:

. . . (F)or the preservation of the army, and in it of the whole commonwealth, requires an absolute obedience to the command of every superior officer, and it is justly death to disobey or dispute the most dangerous or unreasonable of them; . . .<sup>24</sup>

His position is clear enough here, perhaps overstated, but it speaks of requirements within the army. As such it makes the point I made above concerning the problem with uncommitted soldiers. It does not speak of who must or should join the army; nor does it relate the obligation to citizenship. These are the issues with which Walzer is concerned.

Walzer also considers Rousseau, whose contract theory is close to his own in spirit, though admittedly not as adaptable to the large modern state as is Locke's. His position is bluntly stated in The Social Contract:

He who wishes to preserve his life at others' expense should also, when it is necessary, be ready to give it up for their sake. Furthermore, the citizen is no longer the judge of the dangers to which the law desires him to expose himself; and when the prince says to him: 'It is expedient for the State that you should die,' he ought to die, . . . <sup>25</sup>

Rousseau does not consider this a sacrifice. He assumes that the social contract has so transformed the man into a citizen that he is panting to know the prince's desire and the state's need. He asks what he must do the way a fireman asks, "Where is it the hottest?" The obligation is only directed by the prince. It must be stated in the first person.<sup>26</sup>

Walzer's use of Rousseau is to show that in the act of consenting, one comes to share values (the moral goods of citizenship). Because they are values they result in motives, and because they are shared, they result in obligation. It is by means of sharing these moral goods that one comes under ultimate obligation. His position is close to Rousseau's in admitting the obligation to give up one's life for the state may be incurred, but it always reflects the common life. This obligation is not to be derived from the general commitment to support a society. It must be professed by the individual who has found society, and in most cases a particular political arrangement, of such value.

There is a crucially important sense in which the obligation to die can only be stated in the first person singular. For this reason, both Plato in the Crito and Rousseau in all his major works are driven to contractualist arguments.<sup>27</sup>

Having vested so much in the requirement of deep commitment and shared value, Walzer must face a problem common to consent theorists. Many persons residing in a state have not, and will not, let it be assumed that they have made such a 'first person singular' commitment. Can we assign this 'common life' and be justified in extracting the subsequent obligation from persons the way we have admitted for lesser obligations? Can one determine a tacit obligation to die for the state? Walzer says no. This kind of consent may not be formally expressed, but it must be explicit through common understandings which are lived out in some manner.

Considering another sort of 'individual obligation' theory may be helpful here. G. R. Grice has a thesis concerning ultra-obligation.<sup>28</sup> This obligation requires an altruistic motive and is an obligation due to the character of the individual. It is, like Walzer's ultimate obligation, a kind of first person singular binding because the persons who benefit from its fulfillment have no right to demand it. It is an obligation without a correlative right. But if this is so, how can it become an obligation subject to claim? Grice does not think it can, but Walzer's use of

'obligation' requires that the obligation may be called due by reference to its public character. He might use Grice's notion in this way. Character, as a private description of a person, might very well reflect social intercourse, benefits received, and hardships shared. We may know one another's character. Ideals derived and espoused together may result in a sort of common ultra-obligation. Thus what we feel called to do, and what others would normally think of as supererogatory,<sup>29</sup> can become explicit and mutually buttressed. As such it may be the subject matter of direct commitments. This, I think, is the kind of obligation that dying for the state is to Walzer. And it makes sense intuitively to say that what is above and beyond the call of duty for a civilian citizen does not even approach the limits of duty of a sworn soldier.

I believe Walzer answers the question concerning ultimate obligation to the state satisfactorily with a yes. But he stresses that one must admit to the value of citizenship and live those values out before the state can call the obligation due. The fact that the state calls in many ways, from the most intimate: come save your families, to the most dubious: we protect you; come protect your protection, does not mean for Walzer that it is justified in calling everyone.

## CHAPTER VI

### CONFLICTS OF OBLIGATION

How does one decide on a course of action in the face of conflicting moral requirements? To answer this, one must look into the sources of the requirements. In so far as the requirements are obligations in Walzer's sense, he recommends that we may determine what we ought to actually do by comparing the strength or willfulness of our commitments. But value is also said to be the source of moral requirements to act. The utilitarians, agreeing that the obligatory is to be defined by value, argue as to which values are to be realized. G. E. Moore, whose work criticizes an empirical identification of these values (this value), reduces the problem of conduct to that of means.<sup>1</sup> Walzer would deny all of this. He agrees generally with Sesonske that questions of obligation need not be answered in terms of effect.<sup>2</sup> If there are conflicts between the realization of values, they are not sources of rightful and valid claims. They are not conflicts of obligation at all by his account. In this chapter I will follow Walzer in this and ask whether conflicts of obligation are settleable by reference to the

consenting act. But first, I will consider how value does figure into Walzer's thesis and look at one instance of conflict in which value and obligation play a part.

### Value and Obligation

Walzer lays a great deal of stress on the matter of benefits as a factor in consenting. This points clearly to a tie between value and obligation. One of his arguments as to why a person is not obligated to a corporate agreement, to an extent which would justify giving up a citizen's right, is that the corporation only provides limited benefits when compared with the state. Again, consent takes time in a way that official agreements do not. 'Consent given over time' results in greater obligation than even quite explicit signs of consent. This seemingly mysterious distinction is cleared up when we see that the common life, which he stresses as necessary for consent, is the enjoyment of something good. Walzer calls these things moral goods, and while they describe group life, they are clearly valuable to the individual as a person. Interest in them is the dynamic factor in the consenting act. I do not think, therefore, that Walzer's notion of consent is quite so independent of value as he might wish to say.

An instance of a moral conflict which is clearly between value and obligation, and one which he wishes to concern himself with, is the case in which obligations are made due to a serious, personal moral commitment. He is concerned in the ninth of his essays with persons who are involved in groups dedicated to social reform. How is their obligation limited by the reasons for incurring them? Or put another way, how independent is the obligation incurred from the values of the persons moved to commit themselves?

Let us suppose that the social ideal in question is a solution to the poverty problem. You and I join the group. We pledge "solidarity forever" and set ourselves to present a unified front to the leaders of the unsatisfactory establishment. Our reason for joining is assumed to be the same, concern for the poor. As we progress, however, it turns out that I am in favor of direct relief whenever and however it is possible. "Nonsense," you say, "that is like watering a tree on its leaves with an eyedropper." You favor radical, systematic change. I go along for the sake of solidarity but continue to offer my own inputs at strategy meetings. The groups' bonds become strong. I find then that you do not mind temporarily ignoring or even making worse the plight of the poor. You suggest that the plight be heightened in the sense that revolutionaries say, "The worse, the better."

As Walzer views the situation, the obligations that I have are to you and the group. The poor have no claim on me. But what of my original concern? This may not be a genuine conflict of obligations, but it is a conflict which cannot be ignored by setting off value as not giving rise to serious judgements of obligation. This is the problem of "political solidarity and personal honor," of integrity and principles thrown against commitments. Consent, in Walzer's sense, never blinds the participants to other moral concerns or their own moral sensitivity. This much is guarded against by insisting that persons who become obligated remain morally autonomous. But this does not solve the problem. What are we to say of persons in this fix? Walzer mostly says that he appreciates it, that persons whose solidarity is always subject to moral limits are the only persons whose loyalty is to be respected.<sup>3</sup>

I wish to pause over this problem and try to generalize it for the sake of clarity. Walzer sees it as Ignazio Silone's problem: the choice of comrades.<sup>4</sup> Who should I become obligated to? A more general, and I hope a more useful way to put this question is: why should I commit myself? Sesonske answers that this question--since it does not refer to an obligation--refers to value. I feel for the poor, so I should commit myself to them. This 'should' is not that of an obligation, but as Sesonske says,

"To say I have an obligation says nothing about any values to be achieved, but if there were no values to be achieved, I should never take upon myself any obligations."<sup>5</sup>

The focus of this value is what Walzer terms honor. It is individual. Obligations objectify it and endow participants in the group with the strengths of mutual support and group action. Obligations, in this case, are actually means of funding organizations with power to achieve the goals of value that the individuals held prior to their commitment.

The problem may be put by asking this question. If obligations are means, does their failure to function relieve the individual of the requirement to meet the obligation? If obligations have a kind of autonomy and hold no matter what, my integrity concerning the treatment of the poor will have to be sacrificed in the event that you hold sway in the group. We will intensify the plight of the poor in order to 'help' them. If on the other hand obligations only hold when they function as intended, claims of obligation may never be made if the commitments were entered into for reasons of self interest. We do obligate ourselves for personal reasons. The ability to do so represents a dimension of social freedom. I do not think it will do to disallow it. But a distinction needs to be made between self interest and those vital interests, the

compromise of which, destroy integrity. If this distinction is not drawn, and we admit that obligations are conditional on fulfilling their function, we arrive at the following unacceptable consequence. Obligations, which should hold according to our considered judgments, may be slipped. I cannot fail to pay a gambling debt because my team let me down. I cannot simply say, "It is not in my interest to pay it, and I bet in my interest." But I should be able to say, "I joined in order to help the poor, but keeping our agreement results in what I consider harm to poor, I am not obligated to do this." The question of the plight of the poor is a weighty question while the question of my gambling obligation is not. But aside from this accident of importance, is there a difference here except from this accident of importance, is there a difference here except that in the second question my interest is not self service? Is this alone enough to allow a solution? I think the answer to both questions is no.

Perhaps though, a position can be framed which disallows individual interest in the matter of limiting obligation. Obligations are often entered into with exceptional conditions. These may be other moral limits, principles, previous commitments, etc. Sesonske believes that these conditions cannot be that one's own interest would be sacrificed.<sup>6</sup> I am not sure that this is so. It

seems to indicate that principles never refer to oneself, or at least that where they coincide with my interests, they are subject to compromise where other principles are not. But this is absurd. Only when the sacrifice of my interest is slight as weighed against an obligation which is great is this obvious. The presumption against failing to meet an obligation is stronger when the obligation is pitted against personal interests as opposed to conflict with a worthy cause. But there is no logical difference.

Referring again to the example of the reform group, we might bring in the condition of relevant information at this point. I may not know what a reform-minded organization plans to do when I join, whereas I certainly do know that I may lose the bet. This is enough to allow me to deny the obligation to the group. But organizations often change their strategies; some of the members may have already sacrificed themselves for the sake of the group or its ideals. Some may have given up their fortune, gone to jail, and I may have participated in the forming of plans which resulted in these actions. Our group may be democratic. In that case, I have agreed to majority rule. I have been counted and won; now I am counted and I lose. In short, the out by means of ignorance only saves us in certain situations. There may be others where the

obligations are legitimate, but my principles stand to be sacrificed nonetheless.

Intuitively, the solution seems to lie in the direction of what I called the "accidental importance" of the plight of the poor. This is to refer to value and to admit that the problem cannot be solved within consent theory itself. Rather than refer this to a utilitarian solution however, a consent theorist could attempt to deny the problem in two ways. The first is to say that there are absolutely no reasons why we should commit ourselves to anything. This is stronger than Walzer's claim that there are no obligations prior to commitment. It is to hold a Hobbesian view that contracts only reflect self interest. In this case, obligations can never be judged as a means when considering whether or not they bind. They must bind. This is simply not descriptive of the source of many modern social commitments, witness the example considered above. A second way is to deny that obligation may arise out of self interest and insist that the value or values which properly move one to obligate himself are X and Y. In addition to the great theoretical problem of showing what X and Y are, this essentially denies the reality of many common conflicts. For example, let us assume that X and Y are health and longevity. A wife strikes a deal with her husband. She gets to watch a Monday

night movie (he misses the football game) on the condition that she bakes him a cherry pie on Tuesday. But on Tuesday, she decides that a pie is detrimental to his overweight condition and eating it conflicts with X and Y. Hence, she has no obligation.<sup>7</sup> This is counter-intuitive.

The problem of honor and obligation is a real one. A solution requires a full reckoning with the questions of value--its relation to requirements and the relation of those requirements to those others encountered through consent--and Walzer does not attempt this. He thinks that the problem points to the need for the possibility of withdrawal without incurring the charge of treason, an act of 'diconsenting.' I agree. But I cannot describe such an act, and he makes no attempt to do so.

#### The Obligation to Disobey

I listed three points at the beginning of Chapter IV which serve as Walzer's positive thesis: Consent is the source of obligation. It defines the limit of our obligations. Conflicts of obligation are to be settled in accordance with the consents. I called the first two Lockeian in origin. This is not true of the third. I shall conclude this investigation by turning to Walzer's

thoughts on conflicts of obligation which are entered into my means of consent.

Walzer holds that obligations derive from group participation to a great extent. The groups which provide the greatest benefits and demand the most explicit loyalty heighten willfulness and make consent stronger over time. This increases the stringency of obligation. He agrees generally with W. D. Ross that when obligations conflict, one should do what is 'more of an obligation.'<sup>8</sup> When my football team plays a bowl game close to Christmas and my participation means missing a fraternity Christmas party, which I have agreed to be in charge of, I compare commitments. I choose. This model is one which Walzer would extend indefinitely. And there is something natural in saying that stringency of obligations should correspond to strength of commitment. Surveying the areas of application, however, a moment's thought will show that this is not true, or not obviously true, in the political sphere. It may be that I have committed myself more openly, more obviously, and repeatedly to my political party. But this does not guarantee that the stringency of my obligation to the party is greater than to my country. Some other scheme is being brought to bear on the issue. The greater obligation is being assigned to referring to the state's

function, by tradition, or just plain convention. We are obviously not speaking of consent in putting the country first.

I believe the thinking behind this conclusion includes all of the features mentioned above. It may be put in this manner: obligations are to communities, but communities are to be divided into categories of primary and secondary. Obligation within one community may follow Walzer's pattern of stringency, but between communities, the categorical meanings set up priorities. Walzer refers to Benn and Peters' position that secondary associations should yield without conflict to primary ones.<sup>9</sup> Sesonske also admits this as a general point.

"In our commitments to the various communities to which we belong, it is generally understood that obligatoriness to the secondary communities may be overriden by obligations to the primary community."<sup>10</sup>

If we know which communities are primary, we can solve many conflicts of obligation without reference to Walzer's measure. Sesonske also provides a clear statement of what Walzer calls the conventional view as to these groups' appropriate designation.

In the contemporary western world the two sorts of community generally regarded as primary are the family and the nation; social, civic, educational, labor, or business groups, political parties,<sup>11</sup> and many others have the status of secondary communities.

With the position and the examples before us, we may ask, what is the real dividing line between primary and secondary communities? Why is obedience always due to the first as opposed to the second? There are two answers deserving of consideration. The first has to do with the different services which the two types of community provide. The state, it may be held, provides all the conditions for the other communities to exist. It has a primary in the civil order. The second has to do with what we may call 'natural importance.' The family is important to me because I am naturally identified with it. My association with it--since it precedes any voluntary commitment--has priority when obligations ensue from that association and some other group at the same time. This second consideration may appear to fit only the family. But actually, applied to government-citizen relationship, it is essentially the idea of Blackstone and his claim of the allegiance required of a natural-born subject. An argument which could be called in for support is that we owe the state of debt of gratitude; this is an instance of the natural duty of gratitude. Ross and others apparently believed in it. And depending on the services actually provided by the state, it is not unreasonable. But saying that we have a *prima facie* duty of obedience to the sovereign body is one thing. To hold that when this obedience is in conflict with another

obligation that there is no obligation--that there can be no obligation to disobey--is another.

Walzer's commitment to modern contract thought sets him against this quite clearly. His move is to question the concept of primacy itself. As Sesonske admits, the groups' designations in these matters are subject to change. Historically, the city-state, the church, and the family in a broader sense have made successful claims to primacy. In many parts of the contemporary 'third world,' the political party is thought to be primary. One can see from this that it is not clear if obligations follow from assignments of primacy or precede them. Saying that the primary group should hold sway may be saying nothing more than that the best team should win. Yes, but which is the best team? What institutions should be primary? And even if we are fairly clear in some areas now, what does the future hold? It is, in ethics, as easy to hypostatize arrangements as it is to hypostatize habits of thought in metaphysics. If there were any type of institution which was naturally primary, this evolution, it seems, would have never occurred. One may attempt to solve this historical issue with a historical theory of expanding sovereignty. The movement has been from religious group or city-state through various stages to the modern national sovereignty. This, however, only describes a condition of primacy

and does not seem to help much in transition phases or borderline cases in which the process is not complete. Not only is the problem of primacy continually being solved, but this primacy which is not historically absolute is not presently perfect either.

A familiar exception to what Walzer calls the conventional view is religion. Another is conscience. Limited claims to primacy are made by the church and acknowledged by the state. One might think that the separation of church and state in the United States is a perfect formula, a clear solution. But the separation is not so clear or so peaceful as it sometimes seems. Both groups claim some jurisdiction over conduct. When one group allows or prescribes what the other proscribes, the waters become muddied quickly enough. The Mormons owed sole allegiance to the church for about 50 years, but church doctrine finally bowed to federal law. In like manner, freedom of conscience, the idea that the morally sensitive self is primary, has been a long, developing story which liberalism has played an admirable part in. But even a liberal government limits it. Conscience must take certain forms. Generally in the United States, it must be founded in a religious source or some merely personal stance which has the function of religion if it is to be respected for such things as claiming draft exemption. This rules out conscientious stands on political issues in

most instances. But the state does allow such groups and individuals to make limited claims to primacy, though a total claim is by definition a revolution and cannot be tolerated if the state intends to maintain its present form.

Walzer does not want to question sovereignty in a general way. Groups, whatever their makeup and practices, cannot claim total primacy or occasional primacy over an area as broad as that of the state. But he does wish to increase the loci of primacy and expand their appropriate, allowable areas. He holds that the state need not conflate claims of primacy in limited areas with revolutionary threats.<sup>12</sup> Furthermore, it should not. To claim primacy as absolute by virtue of sovereignty is to ignore consent. Consent is to the government, but it is also to other groups and persons. The same persons who legitimate the government by their participation should also be able to limit it by their agreements in other areas.

Walzer does not doubt that these agreements may be stronger than the passive act which I have construed as consenting to the society or the government. He agrees with Rousseau that small societies are morally superior to large ones.

Indeed, if the contract is taken at all seriously, it is difficult to avoid the conclusion that groups in which willfulness

is heightened and maximized can rightfully impose greater obligations upon their members than can those catholic religious and political associations where membership is, for all practical purpose, inherited.<sup>13</sup>

He is not disallowing statemembership or obligations received by way of enjoying benefits which only the state can provide. This is not a call to revolution in favor of a Rousseauian or Aristotelian model of the state. There is an effort here to preserve the state's claim on its members by way of Lockeian thinking while allowing for the political value (moral goods) of more intense and ambitious plans and arrangements. Thus his strongest claim:

I want to suggest that men have a *prima facie* obligation to honor the engagements they have explicitly made, to defend groups and uphold ideals to which they have committed themselves, even against the state, so long as their disobedience of laws or legally authorized commands does not threaten the very existence of the larger society or endanger the lives of its citizens.<sup>14</sup>

Walzer is not worried by the problem of universalizing this disobedience. For though disobedience is the problem, it is not the primary description of what one is to do. One is to keep one's obligations. Obligations which are greater by their kind and manner of incurrence, hold sway, subject to the conditions listed above. Walzer thinks that anyone who does not admit to these conditions, like the man in Joseph Ellin's example in Chapter V (Footnote 17) who thought "congress a bunch of moral

imbeciles," is not morally serious.

. . . the moral seriousness of the disobedient members is evidenced in part by their respect for genuine goods the state provides not only to themselves but everyone.<sup>15</sup>

The situation, in which citizens honor the basic sovereignty of their government but make limited primary claims in some areas, is both descriptive of an open society and prescriptive concerning the society's openness.

Unless the state deliberately inhibits the normal processes of group formation, . . . it will always be confronted by citizens who believe themselves to be, and may actually be, obligated to disobey.<sup>16</sup>

Only if the possible legitimacy of counter groups with limited claims is recognized [as primary] and admitted can the state be regarded as a group of consenting citizens.<sup>17</sup>

The term used to designate this division of allegiance, like Methodism in religion and Impressionism in art, was first a derogatory term; it was called pluralism. Walzer suggests that pluralism makes possible the notion of a real choice of 'who governs me.' This is a partial choice, but the range of freedom depends to some extent upon the individual's own involvement. This is missing in Lockeian theory, or at least it is a very remote extreme. For Locke's theory to contain the notion of a real choice, emigration had to be a possibility. But emigration, or the failure to

emigrate, as a sign of choice will not carry the load. With limited means, family ties, and cultural and language limitations playing the part they do in practical life, emigration is meaningless as a choice to most persons. It might be easier to move now than in Locke's time. But the condition of freedom would make suspect any serious claim of consent that rests upon the fact that a person does not emigrate. And, as it has been pointed out, even emigrating is not a choice to live without a government. It is simply to choose another.

Walzer maintains that pluralism offers a choice of who or what group controls my involvement in many areas, some of which may be primary. Of course I may ask, why am I under any government? Neither pluralism nor consent theory can answer this. Walzer would not consider this a practical question; it is not a question which men are asking. They are asking to whom they are finally responsible, and pluralism offers a choice in this matter. This is a sort of "internal emigration," and it is necessary as a serious alternative according to Walzer. As long as it is a real possibility, the state's claim, that silence or not joining such groups is tacitly consenting to the state, is strengthened.

It is not the case, of course, that whoever fails to seize upon these alternatives declares himself a member of the state and

accepts all the attendant responsibilities. But membership is established as a moral option by the existence of alternatives.<sup>18</sup>

#### Pluralism and Other Sources of Disobedience

In considering Walzer's position, I think it is useful to set it off from other issues which it resembles. First, this is not conscientious objection. In deciding against it, we would not be ruling out conscientious objection. In admitting it, we would not be granting moral infallibility to the individual. There is much criticism of the 'protestant conscience' as an abused ideal in the modern world of individualism. The force of the charge is that opinion is being raised to the moral level of 'conscience' by the extension of the rights concept. Self interest is being passed off as principle. This is essentially the problem discussed under the term honor earlier. Walzer is generally suspect of the conscience which does not reflect shared values and depend on group support. The obligation to disobey is public and relational.

Walzer's position here cannot be identified consistently with civil disobedience either. The difference is that claims to primacy are actually claims limiting the state while civil disobedience is an effort to purify or increase justice within the state.<sup>19</sup>

This is the way modern thinkers (and civil rights workers) speak of civil disobedience though it is a narrower sense than Thoreau's. It may be said that obligation according to this view is to the ideal state. It holds that one is meeting his obligation by pointing out how the current officials are falling short. It should be clear that this is not obligation in the sense that Walzer speaks of it, because the ideal state has no body or court in which to hear claims. Claims may be made in its behalf, but there is no mutuality here just as there is none in the concept of having obligations to the 'community of man.'

Political groups may have ideals, which they identify with the state, as a goal. And it is true that conscientious objection, as Rawls, Martin Luther King, Jr., Karen Johnson and others have spoken of it, originate in such groups. Walzer would say, however, that the obligations are to the group members. When a feature of the ideal state results in the obligation to disobey the actual state, this is a claim of primacy on the part of the group which holds that ideal feature as the subject of common action. They are within the body politic but not within the state as they are wont to say. In this sense, Walzer's concept lacks a certain selfless nobility and optimism which characterize civil disobedience. But it has the advantage, I think, of being more candid and more

descriptive of the actualities at play. Walzer can point to other members who have expectations, but the civil disobedience thinkers mentioned above must point to principles and justify them. This is not to say that it cannot be done of course, but only that the justification is somewhat less concrete than that of the view being considered here.

### Evaluation

How well does Walzer's concept of resolving conflicts of obligation work? That is our question. As to the feasibility of his pluralism, any really useful judgement in this area would require careful attention to more specific issues. It is difficult to argue against the general points which he makes. States obviously do allow primary claims in limited areas. If they used their superior force to disallow these liberties, when the only threat to the state was against its total control, the state would appear unjust. A state in which persons are committed in several primary areas does seem less subject to abuse due to constraints which are built in to the admission of primacy. And a government which wishes to claim that its just powers are derived by consent, cannot ignore the consents which its citizens have made to other

associations. There seems to be little more to say in this connection unless a more specific issue is considered.

The whole scheme remains to be examined however. My first question has to do with the issue of 'moral seriousness.' It seems to be a bold exception to Walzer's rule as to how conflicts are to be resolved. To be morally serious is to recognize that in some cases the commitment, however strong, may not justify disobedience. That is to say that consent to the state, even when it is tacit, may hold in lieu of any obligation no matter how explicit. This does seem to be a proper description, but it throws doubt on his main contention. If one can reason from the function of a group to its right to extract obligation, then the real manner of deciding these questions is look at the group's function first and only then consider the stringency of obligation in Walzer's sense. My proposal for avoiding this is to admit, as I did concerning the source of obligation, of 'requirements beyond consent.' This allows for an admission of requirements that do not appeal to consent and do not therefore enter into the conflict of obligation scheme. If they are entered there, they are contrary to Walzer's main idea. Besides, this is not what 'morally serious' obviously means even if its usage were confined to the political sphere, which is unlikely.

If consent were limited as I am suggesting, one could hold the following. In the area where consent is the source of social requirements, no priority of obligation may be assigned prior to investigating the specific commitments. But in those areas in which all members of a society are justly subject, a 'consented to' requirement (an obligation) to disobey cannot claim precedence. This would hold unless there are some other conditions met such as a complete justification for a revolution. This would be extensive, requiring as a minimum, good reasons for believing that the proposed regime could establish and maintain the peace and provide those benefits the state currently provides in a more nearly just manner.

This issue is complicated by the fact that democratic governments take over and democratize those functions which I am admitting as necessary with or without democracy. In the 'rules of the road' example mentioned earlier, I said that these rules are subject to change by mutual agreement. This agreement, say, to yield to persons on the left does not require any great intensity of commitment. Nor does establishing it clearly result in great benefits compared with a rule to yield to those on the right. As an agreement, it becomes one among others, but as a requirement, its stringency is maintained by its force as a 'requirement beyond

consent.' I believe that these kinds of requirements, and the necessity of someone to enforce them, constitutes the core of the state's claim to primacy. Talk about primacy is simplified when this is recognized.

What emerges from these considerations is that judgement of obligation by depth of commitment seems to work in those areas where there is some depth. Where there are positive conflicts between more or less clear commitments, considering the commitments as well as the consequences seems intuitively correct. But in those areas where consent is tacit, where willfulness is minimal and deliberateness is doubtful, the standard dissolves into other considerations. Walzer could hold that an individual may be informed of his benefits, that the claimant and the other contractors or persons knowledgeably involved could show him his obligations, and he could thus come to feel obligations and decide in this manner. I cannot say that this is impossible, but the manner of determining the stringency of an obligation appears to have split in this argument. There is an unresolved tension here between benefits and willfulness of membership. One could say that this is an unresolved tension between the contract theories of Locke and Rousseau. Only Rousseau's admits easily to the resolution of conflict by reference to commitment. And the limits of

Rousseau's theory have been put already. I think it a fair criticism of Walzer to say that he is trying to stretch Rousseau's sense of positive value in commitments over too broad an area. For alas, those persons of the societies he is considering often are the citizens of Bodin and Locke rather than Athenians and Romans.

### Conclusion

This investigation has been executed in two parts. The first three chapters were mostly concerned with theoretical groundwork. The goals of these chapters were: (1) to set out Walzer's position in a theoretical manner, a task which he did not take upon himself, (2) to get clear about the obligation concept which he employs, and (3) to state the necessary conditions for obligation-generating consent. These conditions were, for the most part, independently arrived at for the purpose of evaluating Walzer's discussion.

The second part has been an extended discussion of Walzer's application of consent theory to current situations and groups. Here too, I have been concerned with theory. Walzer has asked questions concerning the politically alienated, and I have discussed the concept of consent as a source of all political obligation. I have concluded that consent is not completely adequate in this regard. Walzer has discussed the obligations of oppressed

minorities and the obligation to die for the state, and I have discussed the limits of obligation: justice and certain kinds of acts. Walzer has written on the obligation to disobey and conflicts of commitment and honor. I have written on moral conflicts as resolvable by reference to the act of consenting.

Concerning this last point, some philosophers, Stephen Toulmin for example, think that ethics is primarily concerned with conflict. If this is true, then the limits which I have identified as attaching to Walzer's method of solving moral conflicts, tell against the usefulness of his position. But it is certainly not a useless task one takes up in trying to get clear on a specific source of moral requirements. Nor is it useless to establish a method for handling conflicts of a certain kind, if these conflicts are in fact common and significant. I believe Walzer has aided us in doing both these things.

At one place Walzer refers to Obligations and the ideas developed in it as being "radically incomplete." His choice of writing essays was a means of being candid about this. Something radically incomplete should not appear more incomplete than it is though. In addition to the essays I have drawn from, Walzer devotes attention to the responsibilities of intellectuals in a short appendix to the essay on oppressed minorities. He has a chapter on

prisoners of war, and when the book was published, the United States did have servicemen in POW camps overseas. There is a critical treatment of conscience in the chapter on conscientious objection and the section on citizenship includes a discussion of suicide and the obligation to live for the state. His choice of topics obviously reflects contemporary happenings rather than illustrative convenience. As such, it seems to me braver in a sense than a theoretical presentation. But in stressing his concern for the concrete, I do not doubt for an instant that he has a strong, thoroughgoing theory, and that it is essentially what I have attributed to him in Chapter I. The range of application, which he demonstrates by these wide considerations, does not in my opinion make the concepts of duty, conscience, or value irrelevant or superfluous in discussing conduct. Nor does it make justice as a description of distributive fairness or desert irrelevant in political talk. But the possibility of considering moral requirements of many kinds as resulting from acts of our own doing has been shown. And where these are the bases for making moral claims, they seem to be very good ones indeed.

## ENDNOTES

### Preface

<sup>1</sup> Robert Louis Stevenson, "Travel," The Golden Book of Poetry (New York: Golden Press, 1971), p. 62.

### Chapter I

<sup>1</sup> These terms appear in Kenneth Kipnis' "Full Consent and the Legitimacy of Experimentation on Prisoners" which was presented at AMINTAPHIL Sixth Plenary Conference (Hampshire College, Amherst, Mass., March 10-12, 1978), p. 2. He acknowledges his debt concerning this analysis to Robert Ladneson's "Two Kinds of Rights" soon to be published in the Journal of Value Inquiry. Michael D. Bayles' paper, "Capacity to Consent: A Preliminary Inquiry and Occasional Commentary," which was also presented at this time, makes a similar distinction and refers to the first sort as "basic" and the second as a bilateral contract, pp. 1-2.

<sup>2</sup> A. John Simmons, "Tacit Consent and Political Obligation," Philosophy and Public Affairs, 5 (Spring 1976), 288-91.

<sup>3</sup> Thomas P. Peardon, ed., The Second Treatise of Government (New York: The Liberal Arts Press, 1952), Sec. 119.

<sup>4</sup> J. P. Plamenatz, Consent, Freedom, and Political Obligation (London: Oxford University Press, 1938), p. 8.

<sup>5</sup> Michael Walzer, Obligations (Cambridge: Harvard University Press, 1970), p. 21.

<sup>6</sup> Ibid., p. 97.

<sup>7</sup> Ibid., p. xii.

<sup>8</sup> "Obligation and Consent," in Philosophy, Politics, and Society, 4th ser., ed. Peter Laslett, W. G. Runciman, and Quentin Skinner (Oxford Press, 1972), pp. 53-57.

<sup>9</sup> Walzer, Obligations, p. 97.

<sup>10</sup> David A. J. Richards, A Theory of Reasons for Actions (Oxford at Clarendon Press, 1971), p. 98. Richards identifies obligations with those requirements which could be justifiably enforced as a last resort. I offer it here as a necessary condition which disallows the subjective implications of the view under consideration.

<sup>11</sup> Alexander Sesonske, Value and Obligation (Berkeley and Los Angeles: University of California Press, 1957), pp. 77-78.

<sup>12</sup> S. I. Shuman, "Informed Consent and Biomedical Research: An Historical Note," presented at the AMINTAPHIL Sixth Plenary Conference (Hampshire College, Amherst, Mass., March 10-12, 1978), indicates the problems, especially those due to the nature of information and patient attitudes.

<sup>13</sup> Ibid.

<sup>14</sup> G. E. Hughes points out in connection with 'condemnation' that this sort of reply is theoretically unlimited in number since it is reasonable to let the individual review, at every reconstructive phase of the dispute, the facts which are aligned to show relevant similarity. "Moral Condemnation," in Essays in Moral Philosophy, ed. A. I. Melden (Seattle: University of Washington Press, 1958), pp. 12-13.

<sup>15</sup> Walzer, Obligations, p. 101.

<sup>16</sup> Value and Obligation, pp. 80-88.

<sup>17</sup> Plamenatz, Consent, Freedom, and Political Obligation, p. 3; John Rawls, A Theory of Justice (Cambridge, Mass.: Belknap Press of Harvard University Press, 1971), Secs. 19 and 51.

Chapter II

<sup>1</sup>Walzer, Obligations, p. 10.

<sup>2</sup>I have in mind here, conscription, workers' obedience to nondemocratic institutions, and blanket claims of obedience to the law among others. Walzer is interested in all of these.

<sup>3</sup>Walzer, Obligations, pp. 5, 51.

<sup>4</sup>A Theory of Justice, p. 113.

<sup>5</sup>"The General Nature of Moral Duty," Philosophy, 28 (January 1953), 42-43.

<sup>6</sup>Taking Rights Seriously (Cambridge: Harvard University Press, 1977), Chap. 8.

<sup>7</sup>A. John Simmons, "Tacit Consent and Political Obligation," Philosophy and Public Affairs, 5 (Spring 1976), 287.

<sup>8</sup>Walzer, Obligations, p. 4.

<sup>9</sup>William K. Frankena, "Obligation and Motivation in Recent Moral Philosophy," in Essays in Moral Philosophy, ed. A. I. Melden (Seattle: University of Washington Press, 1958), pp. 40-82.

<sup>10</sup>Walzer, Obligations, p. 7.

<sup>11</sup>Donald Davidson, "How is Weakness of the Will Possible?" in Moral Concepts, ed. Joel Feinberg (Oxford University Press, 1970), pp. 93-114.

<sup>12</sup>"Conscience and Conscientious Action," in Feinberg's Moral Concepts, p. 74.

<sup>13</sup>Walzer, Obligations, p. 80.

<sup>14</sup>William Neblett, "Feelings of Obligation," Mind, 85 (July 1976), 342.

<sup>15</sup>Richard B. Brandt, "Blameworthiness and Obligation," in Essays in Moral Philosophy, ed. A. I. Melden (Seattle: University of Washington Press, 1958), p. 35.

<sup>16</sup>W. D. Ross, The Right and the Good (Oxford at Clarendon Press, 1973), pp. 4-7.

<sup>17</sup>Anarchy, State, and Utopia (New York: Basic Books Inc., 1974), p. 95.

<sup>18</sup>Cambridge University Press, 1971, Chap. 4.

### Chapter III

<sup>1</sup>Consent, Freedom, and Political Obligation, pp. 122-23.

<sup>2</sup>"Medical Experimentation on Prisoners," presented at the AMINTAPHIL Sixth Plenary Conference (Hampshire College, Amherst, Mass., March 10-12, 1978), p. 8.

<sup>3</sup>Obligation and the Body Politic (New York: Oxford University Press, 1960), p. 38.

<sup>4</sup>Nozick, Anarchy, State, and Utopia, p. 18.

<sup>5</sup>H. A. Prichard, Moral Obligation (Oxford at Clarendon Press, 1949).

<sup>6</sup>Obligation: A Social Theory (Ann Arbor: The University of Michigan Press, 1970).

<sup>7</sup>Ibid., p. 68.

<sup>8</sup>Michael H. Robins, "The Primacy of Promising," Mind, 85 (July 1976), 323.

<sup>9</sup>Walzer, Obligations, pp. 106-7.

<sup>10</sup>Ibid.

<sup>11</sup> "Consent to Medical Research on Children," presented to the AMINTAPHIL Sixth Plenary Conference.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*, p. 11.

<sup>14</sup> See Chapter IV of this study, "Military Service."

<sup>15</sup> The Second Treatise of Government, Sec. 14.

<sup>16</sup> "Consent to Medical Research on Children," p. 11.

<sup>17</sup> Nozick, Anarchy, State, and Utopia, pp. 153-60, 198-204.

<sup>18</sup> *Ibid.*, pp. 207-8.

<sup>19</sup> A Theory of Justice, pp. 20-21. Rawls uses 'equilibrium' in another way, p. 456, where it is related to social stability, but our interest is in its use as the end of the deliberative process. Richard B. Brandt, Ethical Theory (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1959), Chap. 10.

<sup>20</sup> Rawls notes that this reflective process is not peculiar to ethics and refers to Nelson Goodman's Fact, Fiction, and Forecast (Cambridge: Harvard University Press, 1955), as an example of how this also applies in science. Sidney Aximm in his paper, "On the Logic of Consent," presented to the AMINTAPHIL Sixth Plenary Conference, quotes Goodman: "A rule is amended if it yeilds an inference we are unwilling to accept; an inference is rejected if it violates a rule we are unwilling to amend" (Goodman, p. 67). These points on the limits of procedures cannot even be made out unless the procedure is itself clear. In identifying conditions, we are still within the logic of consent itself.

<sup>21</sup> Rawls, A Theory of Justice, p. 21.

<sup>22</sup> Obligations, p. 118.

<sup>23</sup> The particular manner of putting this is borrowed from a paper, "On Consenting" by Edmund L. Pincoffs, presented to the AMINTAPHIL Sixth Plenary Conference, p. 8. His position, however,

is only sketched there and arises from different contexts than our present discussion. Its development here leans on Walzer's political notions.

<sup>24</sup> Walzer, Obligations, p. 193.

<sup>25</sup> Ibid., p. 13.

<sup>26</sup> Ibid., p. 50.

<sup>27</sup> I am aware that I have not addressed 'state of mind' in any previous discussion, but I take it as a necessary component of being free to consent. Problems of normalcy or normality being what they are, it is hard to see how more can be asked for than this average, given a certain minimum level of functioning ability.

<sup>28</sup> "Consent to Medical Research on Children," p. 11.

<sup>29</sup> Walzer, Obligations, p. 193.

#### Chapter IV

<sup>1</sup> A. John Simmons, "Tacit Consent and Political Obligation," p. 278.

<sup>2</sup> Taking Rights Seriously, pp. 206-7.

<sup>3</sup> Essays in Moral Philosophy, pp. 104-5.

<sup>4</sup> Walzer, Obligations, p. 16.

<sup>5</sup> Ibid., p. 103.

<sup>6</sup> Elizabeth Anscombe, "War and Murder"; John C. Ford, "The Morality of Obliteration Bombing," both in War and Morality, ed. Richard Wassterstrom (Belmont, California: Wadsworth Publishing Company, Inc., 1970), pp. 15-22, 42-54.

<sup>7</sup> Walzer, Obligations, p. 100.

<sup>8</sup> Ibid., p. 114.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid., p. 117.

<sup>11</sup> Robert Brown, Rules and Laws in Sociology (Chicago: Aldine Publishing Company, 1973), chap. 5, esp. p. 79; Explanation in Social Science (Chicago: Aldine Publishing Company, 1973), chap. 10.

<sup>12</sup> Robert Nozick, Anarchy, State, and Utopia, pp. 26-28. Nozick distinguishes between the minimal, ultraminimal, and night-watchman types of states in a manner not explained or relied upon in this point.

<sup>13</sup> Walzer, Obligations, p. xiv.

<sup>14</sup> H. L. A. Hart, "Are There Any Natural Rights?" The Philosophical Review, 64 (January 1955), pp. 175-191.

<sup>15</sup> This is Nosick's term and definition, Anarchy, State, and Utopia, p. 7.

## Chapter V

<sup>1</sup> Walzer, Obligations, p. 50.

<sup>2</sup> A Theory of Justice, p. 112.

<sup>3</sup> John Locke, The Second Treatise of Government, ed. Thomas P. Peardon (New York: The Liberal Arts Press, 1956), sec. 168.

<sup>4</sup> Philosophy, Politics, and Society, 4th ser., pp. 64-67.

<sup>5</sup> A. John Simmons, "Tacit Consent and Political Obligation," pp. 285-86.

<sup>6</sup> Walzer, Obligations, p. 118.

<sup>7</sup> The Social Contract and Discourses, trans. Cole, p. 303.

<sup>8</sup> Walzer, p. xii.

<sup>9</sup> Michael A. Slote, "Desert, Consent, and Justice," Philosophy and Public Affairs, 2 (Summer 1973), p. 333.

<sup>10</sup> "A Paradox in the Theory of Democracy," Philosophy, Politics, and Society, 2nd ser., eds. Peter Laslett and W. G. Runciman (Oxford: Basil Blackwell, 1962), pp. 71-87.

<sup>11</sup> Consent, Freedom, and Political Obligation, pp. 19-20.

<sup>12</sup> "The Logic of Consent," presented to the AMINTAPHIL Sixth Plenary Conference (Hampshire College, Amherst, Mass., March 10-12, 1978).

<sup>13</sup> Walzer, Obligations, p. 48.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid., p. 62.

<sup>16</sup> Ibid., p. 69.

<sup>17</sup> The honest revolutionary, one who admits to no obligation and rejects the channels of appeal is thus set off from the active oppressed. Against these persons, Walzer will not judge as Locke would not judge. But he does say that they are rare in a democratic society. As for the individual who is a revolutionary in his heart only, who uses the system but secretly denies any claim upon him, Walzer would raise the charge of insincerity (p. 70). His actions result in real obligation, the way actions do for Walzer, and claiming justifiable deceit as a means to revolution is to propose a regime without the first virtue of public life. Against this position, Joseph Ellin in "Consent in Political Philosophy," a paper presented to the Sixth Plenary Conference of the AMINTAPHIL, denies that participation implies consent. He offers a "little parable" the flavor of which may be gathered from the opening. "Suppose I think the President is a hypocrite and a liar, the Congress a bunch of moral imbeciles, the judges pompous fools . . . (p. 2). Later he writes, ". . . I actively support the candidacy of minor parties" (ibid.). Is such dissent consent? Is such activity insincere? Walzer would say it is one or the other. In the former case, only slight obligations might be incurred. Nothing much need be said about deception and insincerity.

<sup>18</sup> Walzer, Obligations, pp. 26-30.

<sup>19</sup> Ibid., p. 28.

<sup>20</sup> Ibid., p. 29.

<sup>21</sup> Ibid.

<sup>22</sup> Walzer, Obligations, p. 80.

<sup>23</sup> The Second Treatise of Government, sec. 139.

<sup>24</sup> The Social Contract, bk. 2, chap. 5.

<sup>26</sup> The Social Contract and Discourses, trans. Cole, pp. 303-4.

<sup>27</sup> Walzer, Obligations, p. 97.

<sup>28</sup> The Grounds of Moral Judgement (Cambridge at the University Press, 1967), chap. 4.

<sup>29</sup> Grice uses the example of Sir Philip Sidney, who when wounded and dying, gave water offered him to the next man over.

#### Chapter VI

<sup>1</sup> Principia Ethica, p. 25, sec. 88, and *passim*.

<sup>2</sup> Value and Obligation, pp. 70, 78-79.

<sup>3</sup> Walzer, Obligations, pp. 201-2.

<sup>4</sup> Ibid., p. 191. He refers to Silone's article, "The Choice of Comrades," Dissent, 2 (Winter 1955).

<sup>5</sup> Value and Obligation, p. 115.

<sup>6</sup> Ibid., p. 109.

<sup>7</sup> The scheme discussed here, where value does not itself obligate but is the only source of real obligation, is not

utilitarian. But it would impose the same critique on other sources of moral requirements. My criticism of it only echoes an early objection to Moore's scheme which was put by Ross. That being that it "seems to simplify unduly our relations to our fellows" (The Right and the Good, p. 19). Rawls makes much the same point against Utilitarianism generally, saying that it "does not take seriously the distinction between persons" (A Theory of Justice, p. 27).

<sup>8</sup> The Right and the Good, p. 8.

<sup>9</sup> S. I. Benn and R. S. Peters, The Principles of Political Thought (New York: The Free Press, 1965), chap. 12; Walzer's mention of this point is in Obligations, pp. 10-11.

<sup>10</sup> Value and Obligation, p. 106.

<sup>11</sup> Ibid., p. 105.

<sup>12</sup> Walzer, Obligations, p. 11.

<sup>13</sup> Ibid., p. 10.

<sup>14</sup> Ibid., p. 16-17.

<sup>15</sup> Ibid., p. 18.

<sup>16</sup> Ibid., p. 15-16.

<sup>17</sup> Ibid., p. 19.

<sup>18</sup> Ibid.

<sup>19</sup> Rawls, A Theory of Justice, sec. 55, esp. p. 364.

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## V I T A

Captain Thomas Wylie Stewart was born in San Antonio, Texas, on August 9, 1946, the son of Louise Stewart and John H. Stewart. He attended Paul H. Pewitt High School, Naples, Texas, graduating in 1963. Higher education includes attendance at Texas Tech University in Lubbock; Louisiana State University in Shreveport; and Southwestern University in Georgetown, Texas. On August 25, 1967, he married Miss Janell Elizabeth Pinkston of Houston, Texas. He received the degree of Bachelor of Arts with a major in philosophy from Southwestern University in May of 1969. In January 1970, he was commissioned in the United States Air Force and has served throughout the continental United States; his most recent assignment has been as a B-52 Aircraft Commander and Instructor Pilot with the Strategic Air Command's 8th Air Force. He has a son, Mark, born in November 1970, and a daughter, Michelle, born in December 1973. In August 1977, he was selected for an instructor's position in the Department of Philosophy and Fine Arts at the United States Air Force Academy. He entered the Graduate School of The University of Texas at Austin in January 1978.

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